THE BODY OF THE COMMON-LAW OF ENGLAND:

As it stood in force before it was altered by Statute, or Acts of *PARLIAMENT*, or *STATE*.

Together with an exact Collection of such Statutes, as have altered, or do otherwise concern the same.

Whereunto is also annexed certain *Tables* containing a Summary of the whole Law, for the help and delight of such Students as affect studies.

By *Edmund Wingate* of *Grays-Inne* Esq;

The Third Edition corrected and amended.

London, Printed for *H. Twyford* in *Vine Court Middle-Temple.*

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OF THE

COMMON-LAW

OF

ENGLAND:

Or, An exact Collection of such Cases, as have been adjudged for the Publick Benefit, and for the Improvement of the whole Law, for the Help and Direction of such Students as are called thereto.

By Edmund Wingate of Gray's-Inne Esq;

London, Printed for H. Twyford in Vine Court, Middle Temple.

The Preface.

THe Summary *of the Common Law (extracted for the moſt part out of Sir* Henry Finch *Knight, his learned Treatiſe of the Law) being intended only to preſent the Original frame of that Law, and not capable of comprehending the* Rules *or* Maxims *of the ſeveral titles of Law, therein contained: It is conceived expedient here further to preſent the ſame Authors continued method of the ſame Law (conformable to that Table) which contains the* Rules *of Law inſerted under their proper titles reſpectively; ſo as the Student by often reading over, and fixing in his memory the order and matter of this Treatiſe, may thereby attain ſuch a certain notion of the Common Law, as may make him apt and ready to apprehend any caſe may be put him, or any Law Book he ſhall read: Howbeit, although the* Rules *here propounded are regularly true, and conformable to the ancient Common Law, yet they have been and ſtill are ſubject to be altered by two other Laws,* viz, *the* Statute-law, *and the* Law *of* Reaſon: *As for the firſt, it hath been a Law framed in all Ages by the Prudence of* Parliaments

ments *for prevention of Inconveniencies found in the Common Law, according to the condition of the people, and state of affairs in the several times, when it was made; a brief Collection whereof (viz. of so much as alters, or otherwise concerns the Common Law) is hereunto annexed. The other is as ancient as the Creation, and coming into the world with man cannot be abrogated, this last many times controuls the Common Law, when in respect of some accidents or circumstances, the Judges are constrained to make a construction according to one or more Rules of reason (if not) against (at least varying from) a positive* Rule *of Law, as might be exemplified by many Instances, if it were now convenient to insist thereupon: but that being deferred to a fitter opportunity, the Abstract following invites your serious and indulgent perusal.*

AN ADVERTISEMENT TO THE READER.

THE *Science of the* Common Law *of* England, *hath not only been in former times, but even at this day, is accounted so Abstruse and Intricate, that it hath always seemed an Impossibility to reduce it into Method: Howbeit, our Learned Authour in his Treatise of the Law, hath not only cloathed it with a* Logical *Method, but with such an exact one, as may be paralleld with (if not extolled above that of* Wollebius *for Theology,* Ramus *for Geometry,* Keckerman, Alstedius, *and other modern Writers, for Logick, Ethicks, Physicks, Politicks, Mathematicks,* &c. *So as the Student having treasured up in his memory the Common places of Law held forth in these* Tables, *together with their Coherence and Dependance one upon another, may be thereby furnished in all the general and necessary Titles of Law, whereunto he may aptly refer any Case he meets with, especially having also before hand by*

perusing the Treatise at large, acquainted himself with the Definitions, Distributions, Affections, Rules and Examples, respectively belonging to each several Title, whereby he may more perfectly understand the nature of them. Besides, if the Text be not read with these Tables, *he will meet with divers things in them which are now abrogated by Statute, and so not Law at this day, as* Sanctuaries, *which are now annulled by* 21. Jac 28. *divers Offences (before)* Petty Treason, *now by Statute made* High Treason, *and the like. All which is left to his Industry and Discretion; the scope and design of this* Summary *being only to shew him the Harmonical frame of the Original Common Law, before it was altered by Statute, Acts of Parliament, and other Constitutions of State, according to the caution before in the Title Page premised.*

Of the Common-Law of *England* observe

1. The Circumstances, viz.

The Place where it is used, *viz.* throughout the Realm of *England*, divided into Counties, Hundreds, and Towns, within which there are divers Usages differing from the Common-Law, called Customs.

The Persons who are to use it, and they are to be considered

As one entire Body: The King. His Subjects: Barons. Commons.

As particular Persons

Natural persons, as every man.

Bodies Politick

As the Com. Law

The King alone, and by himself considered.

The Rector of a Church, or Parson.

Grown of latter time.

Temporal, as Major and Communalty, &c.

Spiritual

Regular, as Abbot and Covent, &c.

Secular, as Bishop and Chapter, &c.

2. The parts, See *Tab.* 2.

3. The common Affection, *viz.* Action, *Tab.* 24.

The parts of the Common Law are two,

The one concerns Possessions, whereof consider

The General Affections

1. To Possessions this is general, that they may pass by { Grant; Exchange; Prescription.

2. Sundry men possessing the same thing by purchase are { Joynt Tenants, who possess by the same Title. / Tenants in common, who possess by several Titles.

3. A possession is either { Restrictive, upon { Limitation, which ceaseth upon doing or not doing of something. / Condition, which is only defeasable upon the doing or not doing of something. } / Absolute, which is neither upon limitation or condition.

4. *Tab.* 3.

The Species, or several kinds, *Tab.* 4.

The other, the punishment of Offences, *Tab.* 12.

4. Poſſeſſions are either in
- Poſſeſſion, *viz.* ſuch as one doth enjoy.
- Action, touching which conſider
  - 1. How it ariſeth, and that is in reſpect of a
    - Right, when wrong was done before.
    - Title, when no wrong was done.
  - 2. The Rules which concern it.
    - 1. A thing in Action cannot be granted, but to him in poſſeſſion, and that by
      - Releaſe, which is the paſſing of the Grantors Intereſt.
      - Confirmation, which is the ratifying of the Grantees poſſeſſions.
    - 2. The grant of a thing in Action, and of ſuch things in poſſeſſion, as cannot paſs by livery of the hand, muſt be by Deed, *viz.*
      - Deed Poll, which is the only Deed of the Grantor.
      - Indenture, which is the mutual Deed of both; and makes an Eſtopel to both parties.

The severall kinds of Possessions, and so a Possession is

- An Hereditament, whereof consider,
  - The severall Estates, viz.
    - Particulat, viz.
      - Certain, which is also called a Term, whereof consider,
        - The severall kinds,
          - For Life
            - In Deed, after actual Seisin.
            - In Law before entry.
          - For years,
            - For his own life.
            - For anothers life, and these are
              - Free-hold.
              - These pass by Surrender.
      - The dependants
        - Remainder, which is the residue of an Estate at the same time appointed over.
        - Reversion, which is the residue of an Estate not at the same time appointed over.
        - These pass with Attornment.
    - Uncertain,
      - At sufferance, when after full Occupation he continueth possession without Authority.
      - At will,
        - According to the custom, as a Copyholder.
        - At pleasure, as a bare Tenant at will.
  - Inheritance, *Tab.* 5.
- The severall kinds, *Tab.* 6.
- Chattel, *Tab.* 11.

Inheritance, whereof consider
- The estate called fee-simple, which is
  - Conditional, when an Hereditament is limited to the Heirs of the body: hither Frank-marriage may be referred.
  - Absolute, which is a Fee-simple to one and his Heirs whatsoever.
- The Incidents,
  - Dower whereby a woman hath the thirds in severalty.
  - Tenancy by the courtesie of *England*.
- The diverse manners of possessing it, *viz.* in
  - Deed.
  - Law.

TABLE 6.

The several kinds of an Hereditament, and so it is
- Common, as
  - A Tenement which is a possession holden, and it is
    - Land, which is a Tenement in manual Occupation, and here prescription hath no place.
    - An Advowson, which is the Interest of presenting to a Church.
  - A bare Hereditament, *Tab.* 7.
- Prerogative, *Tab.* 10.

TABLE 7.

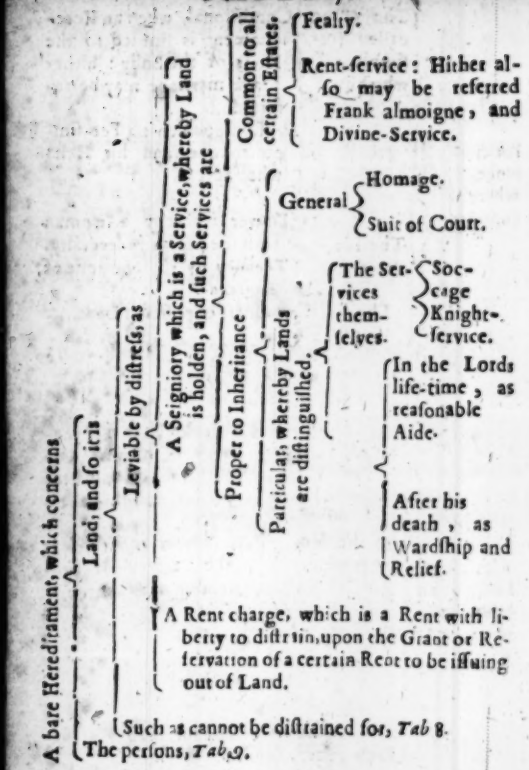

A bare Hereditament, which concerns
Land, and so it is
Leviable by distress, as
A Seigniory which is a Service, whereby Land is holden, and such Services are
Common to all certain Estates.
Fealty.
Rent-service: Hither also may be referred Frank almoigne, and Divine-Service.
Propet to Inheritance
Particulars, whereby Lands are distinguished.
General
Homage.
Suit of Court.
The Services themselves.
Socage
Knight-service.
In the Lords life-time, as reasonable Aide.
After his death, as Wardship and Relief.
A Rent charge, which is a Rent with liberty to distrain, upon the Grant or Reservation of a certain Rent to be issuing out of Land.
Such as cannot be distrained for, Tab 8.
The persons, Tab. 9.

TABLE 8.

A bare Hereditament concerning Land, for which no distress can be taken, is

- Rent-seck, which is a Rent without liberty to distrain.
- Common, which is a profit to be taken in anothers Land: whither also may be referred Estovers, Houseboot, &c. Also a way over Land, liberty to Fish, Hunt, draw Water, or the like.

TABLE 9.

A bare hereditament, that concerns the person, is

- Of the person himself, as a Villain.
- By reason of the person, viz.
  - An Annuity, which is yearly Rent to be had of the person of the Grantor.
  - A Corody, which is a portion for ones sustenance or cloathing.
  - An Office, which is a duty of Attendance upon a charge.

A Prerogative Hereditament, which is derived from the Kings Prerogative, and is termed a Franchise, being a Royal privilege in the hands of a Subject; as Markets, Fairs, Toll, and whatsoever liberties else, which (created at first by the Kings special Grant, or of their own nature belonging to him) are given to a common person to have an Estate in: Of this sort also are Execution and return of Writs, forfeited Recognizances, Fines, Post-fines, Issues, Amerciaments, and other Green-wax Money within such a Precinct or Liberty. Also power there to make a Coroner, Clerk of the Market, and other officers; to have therein Treasure Trove, Deodands, wreck of the Sea, Waifs, Estrayes, the goods of Felons, and outlawed persons, Royal Mines, Royal Fish; to keep a Leet, to take Conusance of Fines, to hold plea of Debts and Damages, Sans sum, and the like.

A Chattel, wherein there cannot be several Estates, whereof consider

A Chattel, wherein there cannot be several Estates, whereof consider

The common Affection, viz. That all ones own Chattels (whether in possession or action, as debts, &c.) may be devised by Testament, which is the appointment of an Executor to administer them for him after his death.

The several kinds, and so it is

- Real, as a Term for years, or Wardship.
- Personal, to which divers things belong,
  - In general
    - Bailment, which is the delivery of goods,
      - To keep, when only the custody is committed to him, and that is
        - A simple bailment, when he receives them to keep for another.
        - A pledg, when he receiveth them for another thing had of him at the time.
      - To employ, as when the Bailee hath the things to use for anothers profit.
      - Contract, which is a mutual agreement for the very property of Personal things.
  - In particular, viz. for the Interest of things uncertain, as
    - Accord, which is an agreement of the parties themselves upon satisfaction executed.
    - Arbitrement, which is an Award of satisfaction by others.

Punishment of offences, which are
- Without force, as
  - Trespass upon the Case
    - Common, as
      - Misuses, when by wrong one is endamaged, as by slander, or the like, amongst which serve
        - Disturbance, which is the hindering of that which belongeth to one to do.
        - Nusance, which is an annoyance done to ones Hereditament.
      - Deceit, when the damage groweth by an undue sleight, or the like.
      - Conspiracy to do one wrong, or the like.
    - Offences in the nature of Trespasses upon the Case, which are (by the Kings Prerogative) punishable like to them, *viz.* by amerciament, as Non suit in an Action; Fault in the Original Writ he brings; Or (by the Sheriff) in the return thereof, making Default, when he should appear: And whatsoever other Offences (not being with force) which offer no direct injury to a common person.
  - Real wrong, *Tab.* 13.
- Coupled with force, *Tab.* 14.

A real wrong is

Ouster, when one is put out of his Free-hold

Indeed, as by

Disseisin of

Land, when one is put or held out by a forcible { Entry. / Detainer.

In every rent by { Incloser. / Forestaller.

Rent, as

In Rent service & rent-charge by { Rescous. / Replevin.

In Rent-charge and Rent-seek, by Denyer.

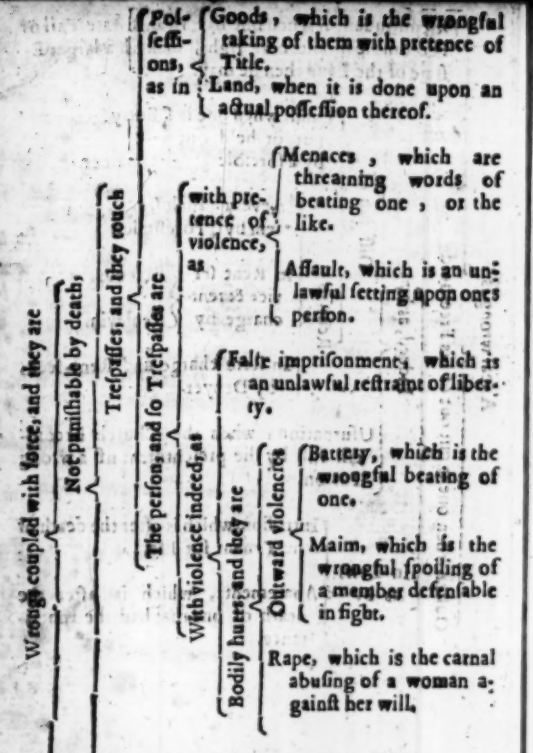
Usurpation, when the Church becometh full by the presentment of a wrong Patron.

In Law, as by

Intrusion, which is after the death of the Tenant for life.

Abatement, which is after the death of one that had the Inheritance.

Discontinuance, when one having an Estate Tail or Fee-simple in another's right, maketh a larger Estate of the Land then he may.


Wrongs coupled with force, and they are
Not punishable by death,
Trespasses, and they touch
The person, and so Trespasses are
With violence indeed, as
Bodily hurts, and they are
Outward violencies
Battery, which is the wrongful beating of one.
Maim, which is the wrongful spoiling of a member defensable in fight.
Rape, which is the carnal abusing of a woman against her will.
False imprisonment, which is an unlawful restraint of liberty.
with pretence of violence, as
Menaces, which are threatning words of beating one, or the like.
Assault, which is an unlawful setting upon ones person.
Possessions, as in
Goods, which is the wrongful taking of them with pretence of Title.
Land, when it is done upon an actual possession thereof.
Offences against the Publick, Tab. 15.
Punishable by death, Tab. 19.

Offences against the publick (termed Contempts) may be committed either.

- Against the King, as,
  - To disobey the Kings Command. { By his Writ. / By his Proclamation.
  - Disobey any thing ordained by Statute.
- Against the Commonwealth, viz. against
  - The peace thereof; as Riots, Routs, unlawful Assemblies, breach of the Peace and Good behaviour, false news, Barreting, Eyes-dropping, &c. Also all Trespasses with force, for which a man may be both indicted and prosecuted at Law by the Suit of the Party.
  - The strength, as to send aid to the Kings enemies, to go beyond Sea, without the Kings Licence, &c.
  - The Justice, *Tab.* 16.
  - The Wealth, *Tab.* 17.
  - The Passages, *Tab.* 18.

1. Perverting of Iustice, as corrupt Iudges, who pervert Iustice; corrupt or negligent Officers, Enditors, corrupt Iurors, Extortion; Escapes, negligent and voluntary, &c.

2. All force against the Iustice of the Realm, as Rescous of a Felon, or others; Affray in disturbance of Iustice: to go armed in the Kings Palace: To strike in *Westminster-Hall*, for which he shall lose his right hand; so shall he that strikes a Iuror in the presence of the Iustices, and be also committed to perpetual Imprisonment.

3. Publick Offences against the Iustice of the Common wealth, as

3. Conventicles, which comprehend Conspirators and Confederators, Maintenance, Champerty, &c.

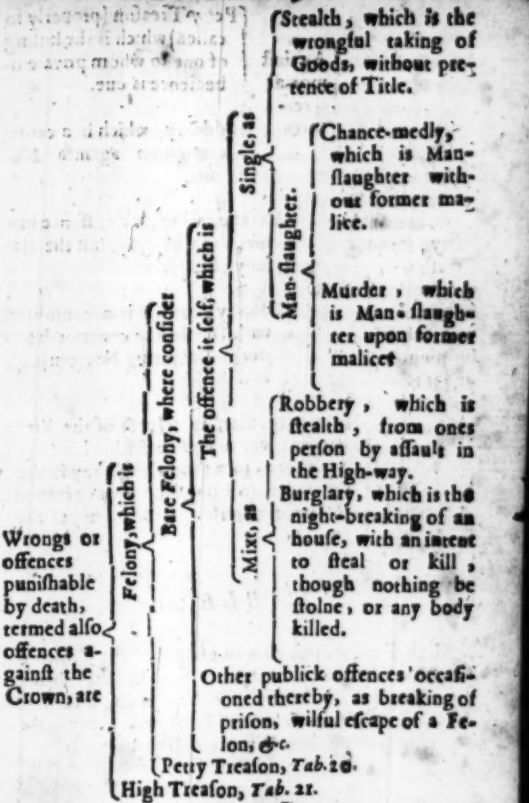
4. Offences in favour of Malefactors, as Misprisions of Treason or Felony, which for Treason is perpetual Imprisonment: Theft-boot, when a man receives his goods from a Thief, with purpose to favour and maintain him; here the punishment is Ransom and Imprisonment: not assisting the Sheriff, Constable, or other Officer, &c.

5. Contempt of Iustice, as he that flies for Treason or Felony: He that in case of Treason, or Felony tarries the Exigent: He that suffers himself to be outlawed, &c.

6. Falsifying of Iustice; as Perjury, Subornation, Forgery, Embracery: all other Falshood in matter of Iustice, &c.

4. Publick Offences against the wealth of the Commonwealth, and that may be
- In the course of Trade, as
  1. To transport the Commodities of the Realm without the Kings Licence, and paying his Custom, Fore-stallers, Regradors, and Ingrossers, Monopolies, Conspiracies of Merchants, false Weights and Measures, &c.
  2. Uttering corrupt Victuals.
  3. Usury, and all Oppression.
- Out of the course of Trade, as Depopulation, burning of Houses, Barns, &c.

5. Publick offences against the Passages of the Common-wealth, as Bridges, Causeys, High-ways, or Streets broken down or digged up: Unto which place may also be referred Common Nusances, Purpresture, &c. Such Nusances any man may abate: And as to Nusances, there is a Writ in the Register for any person that will sue, when the Wayes, Streets, or Lanes of any Town, City, or Borough Corporate, or the Suburbs thereof are full of Dirt, Soil, or the like, whereby Infection may be caused: And this Writ may be directed to the Mayor, or the like, to cause them to be cleansed and kept clean. There is also another writ for removing a Leper, to prevent Infection; both which Writs will come hereafter to be mentioned in their proper places.

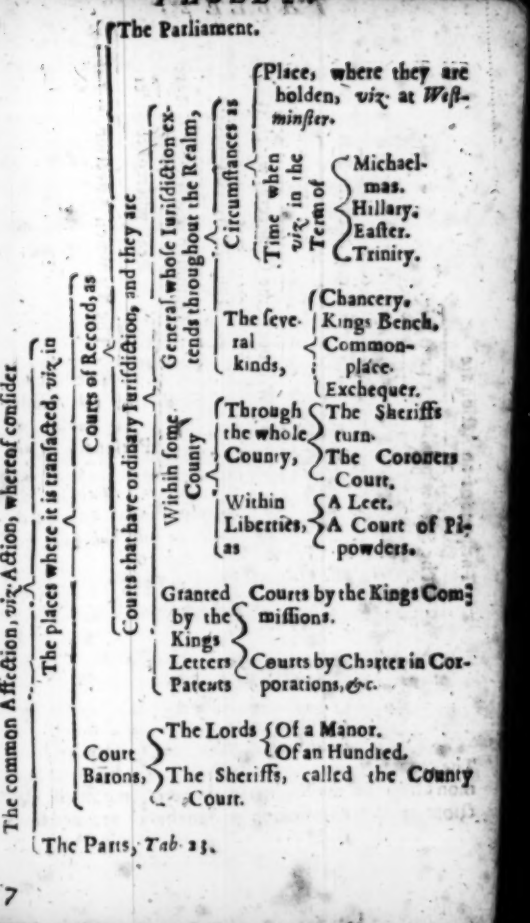

Wrongs or offences punishable by death, termed also offences against the Crown, are
Felony, which is
Bare Felony, where consider
The offence it self, which is
Single, as
Man-slaughter.
Chance-medly, which is Man-slaughter without former malice.
Murder, which is Man-slaughter upon former malice.
Mixt, as
Stealth, which is the wrongful taking of Goods, without pretence of Title.
Robbery, which is stealth, from ones person by assault in the High-way.
Burglary, which is the night-breaking of an house, with an intent to steal or kill, though nothing be stolne, or any body killed.
Other publick offences occasioned thereby, as breaking of prison, wilful escape of a Felon, &c.
Petty Treason, Tab. 20.
High Treason, Tab. 21.

Petty Treason, the punishment whereof is burning, and it is

- General,
  - Against mortal Creatures.
    - Petty Treason (properly so called) which is the killing of one to whom private obedience is due.
    - Sodomy which is a carnal copulation against Nature.
  - Against God,
    - Heresie, which is an offence immediately bent against the Majesty of God.
    - Sorcery, which is a consulting with Devils, and containeth under it Conjuring Necromancy, and the like.
- More particular, in respect of the Kings Prerogative, as counterfeiting his Coin, Seals, &c to acknowledge any foreign Potentate, to bring false Money into the Realm, counterfeit to the money of *England*.

TABLE 21.

High Treason, which is an offence of the Crown directly bent against the State: Also to kill the Chancellor, Treasurer, a Justice of either Bench, a Justice in Eyre, of Assize, or Oyer and Terminer, being in their places, and doing their Offices, is High Treason.


The common Affection, viz. Action, whereof consider
The Parts, Tab. 23.
The places where it is transacted, viz. in
The Parliament.
Courts of Record, as
Courts that have ordinary Jurisdiction, and they are
General, whose Jurisdiction extends throughout the Realm,
Circumstances as
Place, where they are holden, viz. at Westminster.
Time when viz. in the Term of
Michaelmas.
Hillary.
Easter.
Trinity.
The several kinds,
Chancery.
Kings Bench.
Common-place.
Exchequer.
Within some County
Through the whole County,
The Sheriffs turn.
The Coroners Court.
Within Liberties, as
A Leet.
A Court of Pipowders.
Granted by the Kings Letters Patents
Courts by the Kings Commissions.
Courts by Charter in Corporations, &c.
Court Barons,
The Lords
Of a Manor.
Of an Hundred.
The Sheriffs, called the County Court.

- The parts of an Action are
  - The Suit, which hath 2 parts, viz.
    - The beginning of the Suit, which hath 2 parts,
      - The first matter of the Suit
        - For every man
          - By Writ out of the Chancery, which is
            - Original, which concerns
              - Common-Pleas, and so it is
                - Real, whereof consider
                  - The Common Affection, as *Tab.* 24.
                  - The several kinds, *Tab.* 25.
                - Personal, *Tab.* 31.
              - Appeals, *Tab.* 33.
            - Commissional, *Tab.* 34.
          - By Plaint, or Bill, *Tab.* 35.
        - For the King, *Tab.* 16.
      - The Original Process, *Tab.* 37.
    - The Proceeding, *Tab.* 40.
  - The Judgment, *Tab.* 46.

TABLE 24.

- The common affections, as
  - Possessory, to recover a Possession
    - In himself, descended from his Ancestor.
  - In the Right, to recover a Possession mixt in the right
    - In himself, descended from his Ancestor.

The several kinds of a real Original Writ, and so it is

- A *præcipe*
- A *Præcipe quod reddat*
- A Plea of Land
- A Writ of Entry, the several kinds thereof will best appear, if we consider
  - Against whom it is brought, *viz.*
    - Against the first party,
    - In the degrees
      - In the *Per.*
      - In the *Per.* and *Cui.*
  - How it grows, *viz.*
    - without wrong at the first
      - Upon the determination of the first Estate, *viz.* by reason of
        - A particular estate ended
          - *Ad terminum qui præteriit.*
          - Entry, *ad Communem Legem.*
        - A condition broken, as *Causa Matrimonii prælocuti.*
      - Upon disability of the person that made it
        - *Dum fuit infra ætatem.*
        - *Dum fuit non compos mentis.*
    - Upon a wrong, *Tab.* 26.
- A Writ shewing the Demandants Title, *Tab.* 27.
- Another real *præcipe quod reddat*, *Tab.* 28.
- A *Præcipe quod faciat*, *Tab.* 29.
- A *Si fecerit te securum*, *Tab.* 30.

- Upon a wrong, viz.
  - Upon a discontinuance:
    - For the recovery of a womans Inheritance or Free-hold, after her husbands alienation, and
      - Death; as *Cui in vita*, and for her Heir, a *sur cui in vita*.
      - Divorce, as a *Cui ante divorcium*:
    - For the Successor of a Bishop, or, &c. after the discontinuance of his Predecessor, as a *Sine assensu capituli*.
  - An Ouster
    - Upon an Intrusion, as a Writ of Intrusion for him in Reversion, or Remainder:
    - Upon a Disseisin, as a Writ of Entry in the *Quibus*, being a Writ in the nature of an Assize.

TABLE 27.

- A Writ shewing the Demandants Title, which is
  - Possessory as a Writ of
    - Ayel, after the Death of the Grand-father, or Grand-mother.
    - Besayel, after the Death of the great Grand-father, or great Grand-mother.
    - Cousinage, after the Death of the great great Grand-father, or great great Grand-mother, &c.
  - In the right
    - A Writ of right in his nature, as a
      - Formedon in
        - Remainder,
        - Reverter.
      - Writ of Escheat:
      - Writ of Dower, *unde nihil habet*:
    - A Precipe in Capite, for the meer right of Lands holden in chief.

Another real *Præcipe quod reddat*, in respect of a Seigniory, as
- A Writ of Right of Ward, to recover the Wardship.
- A Writ of Right for Disclaimer, for the Lord to prove the Lands to be holden of him, when the Tenant in a Court of Record disclaimeth to hold of him.

TABLE 29.

A real *Præcipe quod faciat*, which is either to recover an
- Hereditament, and this is either
  - In respect of a Seigniory:
    - A Writ *de consuetudinibus & servitiis.*
    - *Secta ad molendinum.*
  - To recover some other Hereditament.
    - A *Quare Impedit.*
    - A *Quod permittat.*
    - A *curia claudenda.*
- Some real thing that concerns an Hereditament, as
  - A Writ of Covenant, as to levy a Fine of Lands, &c.
  - Writs in the nature of a Covenant real.
    - A Writ of Mesne.
    - A *Warrantia Cartæ.*

- An Assize
  - Of his own possession, as
    - An Assize of Novel Disseisin,
    - An Assize of Nusance.
  - Of his Ancestors Possession; as an Assize of *Mortdancestor*.
  - Either of his own or his Ancestors possession, as an Assize of Darrein presentment.
- A zeal *Si fecerit te securum.*
- A *Quare impedit*, for a Parson or Vicar, upon his Predecessors alienation.
- Others
  - Such as be between Privies in blood; as
    - A *Partitione faciendâ.*
    - A *Nuper obiit.*
- A *Quo jure*, to try for Common:

TABLE 31.

A personal Original Writ is also

- A *Præcipe*
  - A *Præcipe quod reddat.*
    - Debt, and a writ of Annuity.
    - Detinue.
  - A *Præcipe quod faciat.*
    - An Action of Account.
    - An Action of Covenant.
- A *Si fecerit te securum*, Tab. 32.

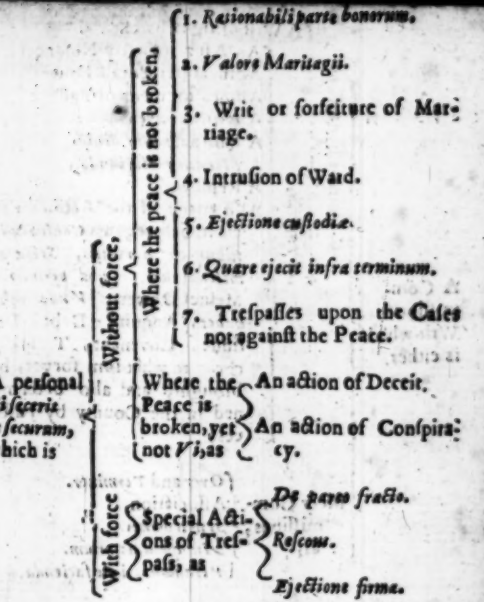


TABLE 33.

An Appeal which concerneth life, and is the parties private action, proſecuting alſo for the Crown, in reſpect of a Felony, and this is given only to the Heir of the party ſlain.

A Commissional Writ, which is either,

- Commissionary, as
  - A Writ of right Patent.
  - An Assize of petty Nusance.
  - Admeasurement of Dower.
  - Admeasurement of Pasture
  - A *Native habendo.*
  - A *Rationabilibus divisis.*
  - A *Homine replegiando.*
  - A Replevin.
  - Also many of the Actions that went before, as *Consuetudinibus & Servitiis, Secta ad molendinum, Quod permittat,* Meine Dower, *Vnde nihil habet,* Annuity, Debt, Detinue, Covenant, Tresposs, &c. to what sum soever, be brought, and also determined in the County by Justices.
- Justicies.
- Meer Commissions, as,
  - *Oyer* and *Terminer.*
  - Association,
  - *Si non omnes.*
  - *An quod damnum.*
  - *Perambulatione faciendo.*

TABLE 35.

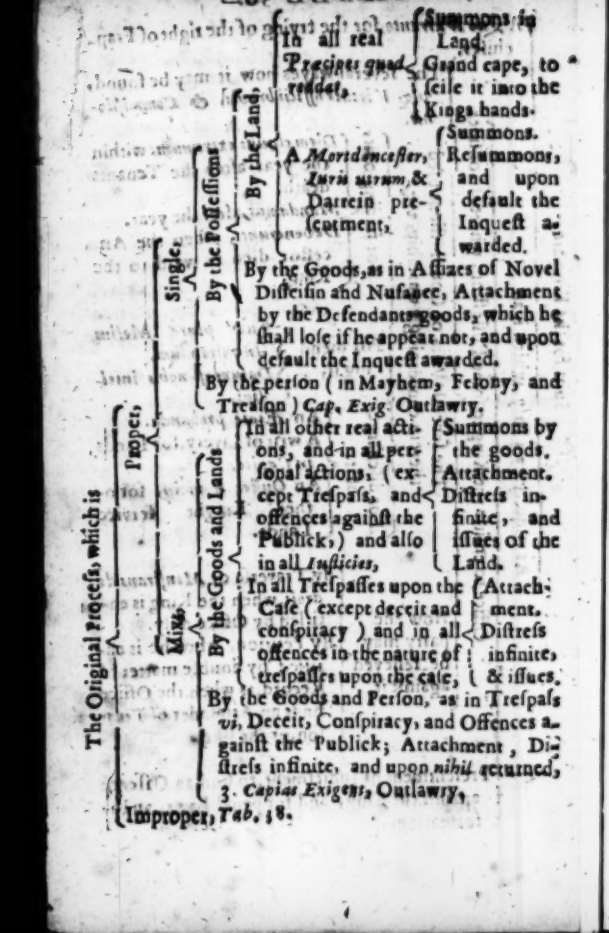
In Courts that hold plea without original Writ, the Suit may be by

- Plaint in matters that concern Common-pleas.
- Bill, in Pleas of the Crown; also Officers of any Court (by priviledge) may sue or be sued there, and not elsewhere by Bill.

A *Quo Warranto*, for the trying of the right of Franchises.

Suits for the King are

- As enquiry by a Jury, which is an
  - Office to entitle the King to some Possession, wherein consider
    - The several wayes how it may be found, *viz. Virtute officii brevis, & Commissionis.*
    - The several Writs or Commissions used therein concerning a Wardship, *viz.*
      - For finding it
        - *Diem clausit extremum*, within the year after the Tenants death.
        - *Mandamus* after the year.
        - *Deveneruns*, when the Ancestor died in ward to the King.
      - For mending it,
        - *Quæ plura Melius Inquirendum.*
        - *Datum est nobis intelligi.*
      - For discharge of it.
        - An *Ætate probanda.*
        - A writ of Livery, for Lands *in Capite.*
        - An *Onster le main*, for other Knight service Lands.
    - How the party may be relieved against it.
      - By Traverse or *Monstrans de droit*, when the King is entitled by Office only.
      - By Petition, when he is entitled by double matter of Record, as when the Office finds an Attainder of Treason, or the like.
  - Presentment or Indictment, to find an Offence against the King, and for penal Laws, an Information.


The Original Process, which is
Proper,
Mixt,
Improper, Tab. 38.
Single.
By the Possessions
By the Goods and Lands
By the Land.
In all real Precipe quod reddat.
Summons in Land.
Grand cape, to seise it into the Kings hands.
A Mortdancester, Juris utrum, & Darrein presentment.
Summons.
Resummons, and upon default the Inquest awarded.
By the Goods, as in Assizes of Novel Disseisin and Nusance, Attachment by the Defendants goods, which he shall lose if he appear not, and upon default the Inquest awarded.
By the person (in Mayhem, Felony, and Treason) Cap. Exig. Outlawry.
In all other real actions, and in all personal actions, (except Trespass, and offences against the Publick,) and also in all Ejusdem,
Summons by the goods.
Attachment.
Distress infinite, and issues of the Land.
In all Trespasses upon the Case (except deceit and conspiracy) and in all offences in the nature of trespasses upon the case,
Attachment.
Distress infinite, & issues.
By the Goods and Person, as in Trespass vi, Deceit, Conspiracy, and Offences against the Publick; Attachment, Distress infinite, and upon nihil returned, 3. Capias Exigent, Outlawry.

Improper, which is not to bring any matter into Plea, or solemn Action, but only to do, or leave undone something, and it is

Commandatory, as
- *Dow assignanda.*
- *Homagio capiendo.*
- *Scutagio habendo.*
- *De Corrodio habenda.*
- *De Annua pensione hab.*
- *De Liberatibus alloc.*
- *De executione Judicii.*
- *De restitutione Temporalium.*
- *De securitate pacis.*
- *De vi laica removenda.*
- Of cleansing Streets.
- *De excommunicato capiendo.*
- *De excommunicato deliberando.*
- *De leproso amovendo.*
- *De cautione admittenda.*
- *De haretico comburendo.*
- *De Coronatore exonerando.*
- *De Coronatore eligendo.*
- *De exoner. vir: forest.*
- *De Electione vir: forest.*
- A Writ for the Royal Assent to elect an Abbot.
- *De securitate invenienda.*
- All *Dedimus potestatem, de fine levando, de attornato faciendo, &c.*

Prohibitory, *Tab.* 39.

1. A Protection, *cum clausula nolumus*, to free ones Possessions, that nothing be taken against his will for the Kings business.

2. To discharge Spiritual persons of Fifteens.

3. *Quod clerici non elegantur in Officium Ballivi*, &c.

4. To forbid Tenant in Dower, by the Curtesie, or Guardian by Knight service, or in Soccage to commit Wast, to the destruction of the Inheritance.

Probitiory, as

5. A *Quo minus*, for Grantee of Estover, to restrain the Grantors from committing Wast, so as he cannot have his Estovers.

6. *De exoneratione sectæ*, for Tenants by Suit of Court or other Services, that they be not distrained to do the same for such time as they ought to hold the Land discharged.

7. *De deonerando pro rata*, To discharge the Tenant of parcel of the Land according to the rate of his Land, when he is lawfully distrained for all the Rent and Services.

8. *De essendo quieto de Thelonio*

9. *De non ponendo in Iuratis.*

10. *Ne exeas regnum.*

- The Proceedings which consists in
  - The Count, or Declaration.
  - The pleading which Pleas are
    - The Defendants first Pleas, *viz.*
      - Dilatory, by taking
        - Exceptions
          - In disability
            - To the jurisdiction of the Court.
            - To the person.
          - In Abatement
            - To the Writ, as default of form, false Latine, &c. and here, if the default be not caused by the Plaintiff, a new Writ may be had by Joutnies Accounts.
            - To the Count, as insufficiency, variance from the Writ, &c.
        - Foraign advantages
          - In all Actions, as *Oyer* of the writ, Condition, &c.
          - In real Actions, as
            - View.
            - Ayd prayer.
            - Voucher.
          - In certain personal actions...
            - Garnishment.
            - Enterpleader, which may also be in a *Quare impedit.*
      - Sanctuary, and there continuing, *viz.* for Treason, and other Capital Offences.
      - To the action, as
        - Pleas in Bar:
        - Confessions to which place Abjuration may be referred, when one guilty of bare Felony, flyeth to the Church &c. and there before the Coroner confesseth the Fact, and abjures the Realm.
    - The mutual pleas of Plaintiff and Defendant, *Tab.* 41.
  - Other mean Acts, *Tab.* 42.

The mutual Pleas of Plaintiff and Defendant, viz.

- The declaring before issue, as Replication Rejoynder, Sur-rejoynder, &c.
- The Issue it self
  - Of the Fact, and then the trial is
    - 1. Of a matter done in the County, by Jury, where challenges are allowed, viz. — To the Assay. / To the Poles.
    - 2. In Writs of right or appeals for life by Battail.
    - 3. In a Writ of Dower (when the issue is taken upon the death of her husband) by witness.
    - 4. By wager of Law.
      1. When the Tenant in a real *præcipe quod reddat* was not summoned.
      2. In meer personal actions growing without deed or privity of others.
      3. In Plaints in Court Barons.
  - Of the Law, as a Demurrer, which is when (admitting the matters alledged) either of them resteth in the judgment of the Law.

- Other mean Acts, as
  - 1. Apparance, where, of Essoins, which are
    - Common, as *Essoine de mal venir.*
    - Special
      1. Of going beyond Sea.
      2. Of going *ad terram Sanctam.*
      3. Of the Kings Service.
      4. *De malo lecti.*
  - 2. Continuance,
    - By Process.
    - Upon the Roll
      - *Dies datus.*
      - *Emparlance.*
  - 3. Judicial Process,
    - A Mesne Process, which is for anyne-cessary act to be done, as against Voucher, Prayer in aid, also
      1. Upon a fine levied to compel Attornment, as
         1. *Per quæ servitia.*
         2. *Quem reddidum reddit.*
         3. *Quid juris clamat.*
      2. In Petitions, a Writ of search.
      3. In real *Præcipe*, upon a default, petty Cape.
      4. Upon default, after Voucher, a petty Cape, *ad valentiam.*
      5. In such as are for other Hereditaments, upon default, a Distress.
      6. Against Jurors,
         1. A *Venire facias.*
         2. A *Habeas corpora.*
         3. A Distress infinite.
    - Process in nature of new Originals, *Tab.* 43.

Process in the nature of new Originals, & they are

Commandatory, viz. such as command something to be done.

1. Resummons, re-attachment.
2. All certificatory Writs.
3. A *Certiorari*, to remove a Record into the Chancery.
4. Writs to remove Suits.
   - By Writ, as a
     - *Tolt*, to remove a Writ of right out of the Lords into the County-Court.
     - *Pone*, to remove out of the Lords Court into the Common-place in all other causes.
   - By Plaint as a
     - *Recordare*, to remove Plaints in the County-Court.
     - *Accedas ad curiam*, to remove Plaints in a Court-Baron.
5. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.
6. A *Procedendo*, to proceed in Suits.
7. A Consultation, to proceed in the Spiritual Court.
8. A Writ of Main-prise, to set one at liberty upon Bail.
9. A Recaption, for him whose Goods are distrained for the same thing.
10. A Writ *de Magna Assisa eligenda*.
11. A Certificate of assize to jurors, to give a more perfect Verdict.
12. *De Proprietate probanda*.

Prohibitory Writs, or Processes

1. Prohibitions, of this kind is an *Indicavit*.

2. *A Supersedeas*, of which kind are
   1. A Writ of Peace.
   2. A *Libertate probanda*.
   3. An *Identitate nominis*.

3. Protections *Cum clausula nolumus*, as
   - *Protectio quia profecturus*.
   - *Protectio, quia moratur*, whether also may be referred, *Protectio quia in prisona*,

4. *Essoine de malo lecti*.

5. *A Ne admittas*.

6. *A Quare incumbravit*.

Judgment which hath Judicial Writs belonging to it, viz.

- Mere Judicial, and they are
  - Such as lye within a year and a day after the Judgment,
    - In real actions.
      1. *Habere facias seisinam*, to put him in possession upon a Freehold recovered.
      2. A Writ to the Bishop to admit ones Clerk.
    - In personal Actions to have Execution of his
      - Possessions, as
        1. *Fieri facias*, to levy Execution upon his Chattels.
        2. *Levari facias*, to levy Execution of the profits of his Land and Chattels.
        3. *Habere facias possessionem*, upon recovery of a term for years in an *Ejectione firma*, &c.
        4. A *Distringas*, for the Kings Amerciaments, &c.
      - Bodily, as
        - *Capias ad satisfaciendum.*
        - *Capias pro fine Regis.* } For the King.
        - *Capias Vtlagatum.* } For the King.
  - A *Scire facias*, to warn the Defendant, after a year, upon recovery in real actions, to shew cause why the Plaintiff should not have Execution.

New Originals, *Tab.* 47.

New Originals in the nature of judicial Writs, to order some matters concerning Iudgments, and these are grounded

Upon an Error

- A Writ of Error, which is upon an Error in a Court of Record.
- A Writ of false Iudgment, which is upon an Error in a base Court.

Otherwise, as

- Attaint, which is to enquire whether a Iury of twelve men gave a false Verdict.
- *Audita querela*, which is for one being, or to be in Execution, to relieve him upon good matter of discharge which he hath no means to plead.

A TABLE, shewing the Pages in the English Copy of Sir *Henry Finche's* Treatise of the Law, from whence each Table takes it's beginning.

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7	134	22	221
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FINIS.

THE BODY OF THE COMMON LAW OF ENGLAND.

CHAP. 1

The Definition of the Common Law, also of the Place where, and the Persons by whom it is used.

1. THe Common Law of *England* is a Law used time out of minde throughout the Realm.

II. The Realm of *England* is divided into *Counties*, (in all 39) & each County into severall *Towns*, a Precinct which anciently contained ten families, called *Tithings*, and ten of those Tithings made a Precinct called an *Hundred*.

III. In some Counties, Towns, and other places of the Realm, there be speciall Usages time out of mind, differing from the Common Law, which are called *Customs*.

IV. A County is a part of the Realm, entirely governed by one Sheriffe.

V. Every one ought to be Inhabitant within some,

tithing, and there find sureties for his good behaviour.

VI. Diverse Towns have *Hamlets* in them, and some speciall places there be, out of any Town or Hamlet.

VII. The persons within the Realm are to be considered, either as one entire body, or as particular persons.

VIII. As one entire body it consisteth of the King, and his subjects.

IX. The King is the Head of the Common-wealth, immediatly under God.

X. And therefore the King hath a shadow of the excellencies that are in God, in a similitudinarie manner given him, as

XI. Infiniteness.

XII. Perfection.

XIII. Majesty.

XIV. Soveraignty.

XV. power

XVI. Perpetuity.

XVII. Justice.

XVIII. Truth.

XIX. He hath also a prerogative in all things, that are not injurious to the subject.

XX. In regard of the King, the Queen his wife is participant of diverse prerogatives above other women.

XXI. his subjects are the members of the Common-wealth, and are Barons and Commons,

XXII. The Barons are called the Peers of the Realm.

XXIII. All the rest are Commons.

XIV. The particular persons, are naturall persons, or Bodies Politique.

XXV. The naturall persons are every man.

XXVI. A Body Politique is a body in fixion of Law, that indureth in perpetuall succession; such is the King

King alone, and by himselfe considered, and a Parson (called) the *Rector* of a Church.

XXVII. The Parson in regard of his continuall attendance upon that sacred function, is freed from all personal charges, that may hinder him in his calling.

XXVIII. So is every other Clerk within Orders.

XXIX. To the Parson belongeth the Tenth of all manner of yearly increase.

XXX. Every Parson must be presented to the Ordinarie, who is to admit him.

XXXI. And then the Arch Deacon is to put him in possession, by delivering the Ring of the Church-door, and ringing the Bels.

XXXII. The Incumbent hath not the meere right in him of land in the right of his Church.

XXXIII. Therefore every act which he doth with such land, may be avoyded, when he ceaseth to be Incumbent, except such as are done by consent of Patron and Ordinarie, which bind for ever.

XXXIV. If the Church be void six moneths, the Ordinary may *Collate*, or appoint a Clerk of his own; and if it be void six moneths after his time, then the Metropolitane and six moneths after his time, the King may present, if the Patron present not before them.

XXXV. when one Church is not able to finde the Cure, the Ordinarie by consent of the Patrons may unite it to some other.

XXXVI. Besides those Corporations, that were at the Common Law, there be diverse other, which have grown of latter time, by speciall foundation election, whereof some are aggregate of many persons viz. of an head and body: Others consist in one single person.

XXXVII. These Corporations are Temporall or Spirituall.

XXXVIII. The Temporall are made by the King, as Major and Commonalty; also Colledges, as Maister and Fellowes, &c.

XXXIX. Diverse Towns are so Incorporate before time of memory, and are called *Boroughs*.

XL. The Spirituall ones were for the most part made by the Pope, but had their power to purchase from the King.

XLI. These are also of two sorts, *viz.* Regular, or Secular.

XLII. Regular, which have entred into Religion, professing to vow three things, *viz. Obedience*, voluntary *Poverty*, and perpetuall *Chastity*.

XLIII. And therefore these are dead persons in law, only their head hath power to purchase, or do such other things to the use of the house. And of this sort are Abbot and Covent, Prior and Covent, &c.

XLIV. Secular, are such as have not entred into Religion, as Bishop and his Chapter, Maister of an Hospitall and his Brethren, Guardian of a Chappel and his Chaplains, &c. Also Arch-Deacons, and the like.

XLV. Touching the Bishop and his Chapter (which make but one body) their possessions are divided, so as the Bishop hath part by himself, & the chapter the residue, which Chapter consisteth of a Dean as the chief, and Prebendaries or such like, who are most properly termd the Chapter; & of these also the possessions are for the most part divided, the Dean having some part solely in the right of his Deanry, and the particular Prebendaries some other part in the right of their respective Prebends: the residue the Dean and Chapter have together; and every of them is to such purpose incorporate by himself.

XLVI. These spirituall Corporations are sometimes pre-

Presentative, somtimes Dative, perpetual or removable sometimes Elective, and have a Common Seal.

XVIII. To them also Parsonages may be Appropriate by the Patron, Ordinary, and King, and Vicars endowed to serve the Cure.

CHAP. 2.

Of Possessions.

1. OF the Common Law there be two parts, the one concerneth Possessions, the other punishment of offences.

II. A Possession is whatsoever may be enjoyed.

III. *The King shall have to his own use all the Possessions of a Fool natwrall, during his Ideocie.*

IV. When one hath the Possession of any thing to anothers use, this was accounted nothing, but as a matter in Conscience and Chancery.

V. Sundry men possessing the same thing by purchase, are Joynt-tenants, or Tenants in common.

VI. Joynt-Tenants, which possesse by the same Title.

VII. And here, the Survivor shall have the whole in the same sort as he had his part, excepting only present interests of the thing it selfe granted by him that dieth.

VIII. Tenants in Common are they, which possesse by severall titles:

IX. To possessions this is generall, that they may be granted.

X. *Every Grant, made by the King upon surmise or suit of the party, shall be taken most beneficially for the King, and against the party.*

XI. *No grant of his is good, when it appeareth within the body of the Grant, that the King is deceived.*

XII. *His grant shall not inure to any other intent then that, which is precisely expressed within the grant.*

XIII. A grant by an Infant under the age of 21. years, one out of his right mind, or compelled thereunto, either by *dures* of Impriſonment, or feat of ſome bodily hurt threatned, as loſſe of life and member, or though it be but of Impriſonment, may be avoyded at any time, if they deliver it with their hand.

XIV. But if they deliver it not with their hand, nothing at all paſſeth.

XV. So it is alſo of a grant made by one, that hath no underſtanding.

XVI. Yet grants of an Infant, in reſpect of having neceſſary things cannot be avoyded.

XVII. Other grants of his, where himſelfe hath likewiſe benefit, are only voydable.

XVIII. To this place belongeth *Exchange*, which is a mutuall grant of equal Intereſts, each in exchange of other.

XIX. Preſcription is as available, as any Grant.

XX. A poſſeſſion is reſtrictive or abſolute.

XXI. A reſtrictive poſſeſſion is upon a limitation, or condition.

XXII. Upon a limitation, which ceaſeth upon the doing, or not doing of ſomething.

XXIII. Upon condition, which is only defeaſible upon the doing, or not doing of ſomthing.

XXIV. Abſolute which is neither upon limitation or condition.

CHAP. III.

Right, titles, Deeds.

I. POſſeſſions are in poſſeſſion, or in an action.

II. In Poſſeſſion, which one doth enjoy.

III. In action which one ought to enjoy, either in reſpect of a right or a title.

IV. Right, when a wrong was done before.

Title

V. Title, when no wrong was done.

VI. Of things in action no ſtranger ſhall take advantage.

VII. Therefore things in action cannot be granted but to him that hath poſſeſſion, and that by Releaſe Confirmation.

VIII. Releaſe is a paſſing of the Grantors intereſt.

IX. Confirmation is a ratifying of the Grantees poſſeſſion.

X. The grant of every thing in action, and of ſuch things in poſſeſſion, as cannot paſſe by the liverie of the hand, muſt of neceſſity be by Deed.

XI. A Deed is a writing ſealed and delivered, and belongeth always to him, whoſe poſſeſſion is made by it.

XII. But a Writing read in another form to one, that cannot read, is not his deed at all, though he ſeal and deliver it:

XIII. A Deed, is a Deed Poll, or Indenture.

XIV. Poll, which is the onely Deed of the Grantor.

XV. Indenture, which is the naturall deed of both:

XVI. An Indenture barreth every of the parties from ſaying contrary to any thing therein contained.

XVII. Somtimes alſo bare acts worke an eſtopple in like ſort.

CHAP. IV:

Heriditaments, Eſtates Terms.

I: A Poſſeſſion is an Hereditament or Chattel:

III. Hereditament is a poſſeſſion, which one may have an Eſtate in:

III. one born of parents out of the Kings allegiance is diſabled to enjoy any Hereditaments:

IV. *Therefore ſuch a one purchaſing any it is the Kings.*

V. An Eſtate is Particular, or an Inheritance.

VI. A Particular Eſtate is uncertain, or certain.

VII. Uncertain, which is determinable at anothers pleaſure, as an eſtate at ſufferance and at will.

VIII. At ſufferance, when after lawful occupation, he continueth poſſeſſion without authority.

IX. At will, when an eſtate is made during pleaſure:

X. And this is according to the cuſtom, as a Copieholder; or at pleaſure otherwiſe, as a bare Tenant at will.

XI. Certain, which is not ſo determinable, and it is called a *Term*, whereupon may depend a remainder of Reverſion.

XII. Remainder, is the reſidue of an eſtate, at the ſame time appointed over.

XIII. Reverſion, is the reſidue of an eſtate, not at the ſame time appointed over.

XIV. Terms are forfeited, by plucking the Inheritance out of him that hath it.

XV. Terms may be ſurrendred, that is, to him that hath the next and higher eſtate.

XVI. A Term is for years, or for life.

XVII. A Term for life is for his own life, or for anothers life.

XVIII. where the Tenant for anothers life dies before *Ceſty que vie*, he that can firſt hap it, ſhall enjoy out the Term and is called an *Occupant*.

XIX. The preſent eſtate for life is termed a *Freehold*, and may be ſo in deed, or in Law.

XX. In deed, when he is actually ſeiſed of it.

XXI. in Law, before his entry, when it is caſt upon him by courſe of Law:

XXII. The releaſe of an Inheritance or of an eſtate for life, is not good to one that is but Tenant for years without privity.

XXIII. To theſe two eſtates a warrantie doth belong

long which is an assurance warranting such an Estate.

XXIV. Every Exchange hath a warrantie knit by Law.

CHAP. 5.

Inheritance, Fee-simple, Dower, Tenancie by the Courtesie.

I. INheritance is an estate descendable to his heires that hath actuall possession.

II. An heir is the next or worthiest of whole blood, being also of blood to the first purchaser.

III. He that is begotten out of Marriage, is called a Bastard, and is of blood to none, but in Law accounted *Nullius Filius*.

IV. A Bastard therefore cannot inherit.

V. But Marriage following after, giveth him the right of inheritance, if after the fathers death he enter before his younger brother, born of the same father and mother within Espousals and continue the possession all his life without interruption.

VI. If the next be women in equal distance, as daughters, Sisters, Aunts, &c. they shall inherit alike, and are but as one heir.

VII. Where the generall Entry of one is of the rest, if they list.

VIII. The inheritance that descendeth shal be charged with the deed of the Ancestor, binding himself and his heirs.

IX. The Dying seized of the inheritance and Freehold together, whereby the land descends unto his heir taketh away the Entry of every one, that may have an Action.

X. But claim upon the land within a year before the death, or if they dare not upon the land for fear of some bodily hurt, then as neer the land as they dare, saveth their entry.

XI. A Fee-simple is a Fee-simple conditionall or absolute.

12. Con-

XII. Conditionall is a fee simple to one, and the heirs of his body.

XIII. This estate before issue cannot be alienated, after issue had, becometh an absolvte fee simple.

XIV. But so, as if the issue fail before the alienation, the donor shall have it.

XV. Hither belong hereditaments given in Frank-marriage with ones kinswoman.

XVI. Absolute, is a fee-simple to one and his heirs whatsoever.

XVII. This estate descending to Females, if one of them have lands of the same Ancestor by Frank-marriage, she shall have no more, unlesse she be content, that the value thereof be allowed to the other.

XVIII. To this place are to be referred Lands given to a Corporation, which go in perpetuall succession.

XIX. Here, two speciall estates for life, *Dower* and *Tenancie* by the courtesie of *England*, do arise after ones death that hath an Inheritãce joyned with the freehold.

XX. Howbeit, these estates must be of a fee-simple, or such an estate taile, as may go to the issue had between the Donees.

XXI. Dower is an estate, whereby the woman hath the thirds in severalty.

XXII. She must be nine years of age at the time of her husbands death, otherwise she shal not be endowed.

XXIII. Detaining of deeds concerning Inheritance descended to the heir, is a barr of her Dower.

XXIV. If the husband at the Church door (*ad ostium ecclesiæ*) or being heir apparant by his fathers or mothers consent (*ex assensu patris* or *matris*) presently upon affiance endow her of any certainty, as of the whole, moity, or lesse part &c. this will barr her of her thirds if she agree to it.

XXV. Tenancie by the curtesie of *England* is an estate, whereby of an actuall possession the husband that

that hath iſſue by her born alive, ſhall have the whole.

CHAP. VI.

Tenement, Advowſon.

I. HEreditaments are tenements or bare hereditaments.

II. A Tenement is a poſſeſſion holden, the Fee-ſimple whereof, when he that hath it dieth without heir, cometh to the Lord:

III. Of this ſort are Lands and Advowſons:

IV. Land is a Tenement in Mannuall occupation:

V. Under the name of Land are comprehended, not only Gardens, Meadowes, Paſtures, Woods, Rivers, &c: but alſo Meſſuages, Mils, Yards, Toſts, Caſtles & the like.

VI. Churches and Church-Yards belong to the Incumbent.

VII. Preſcription here hath no force:

VIII. *All Land is holden of the King immediatly, or by means, himſelfe not having any higher upon earth; of whom to hold.*

IX: *Eſcheats of all Cities appertain to the King:*

X: *All Mines of Gold and Silver, or wherein the gold or ſilver is of the greater value, are the Kings.*

XI. Amongſt Coperceners, the eldeſt upon partition ſhall have the cheif houſe:

XII. Seiſin delivered of land alwaies paſſeth a freehold.

XIII. Otherwiſe a Freehold of land cannot paſſe ſave by releaſe and confirmation, where they are by way of enlarging an eſtate.

XIV. They may alſo ſomtimes paſſe by Exchanges Endowments, or Surrenders.

XV. An eſtate made within view of land is a good Liverie of ſeiſin, if the other enter in the Feoffors life time.

XVI. An Advowſon is an intereſt of preſenting to a Church.

CHAP.

CHAP.7.

Distres, Seigniories, Fealty, Rent-service, Homage, Suit of Court, Tenures, Releife, and Rent charge.

I. BAre Hereditaments are those, which are not holden, and concern the Land, or the person.

II. Those that concern the Land are extinguished, or gone for ever, when he that hath them, hath high and continuing an estate, as he hath the hereditaments.

III. Otherwise they are but suspended, or gone for a time

IV. These are leviable by distresse, or such as cannot be distrained for.

V. Distresse is a taking of Chattels, found upon the same Land, for satisfaction of Arrearages.

VI. *The King may distrain in any other land of the same mans for his Service or Rent charge.*

VII. The distresse being put in some place, where the owner may lawfully come by them, as, if they be things that have life, to give them meat, &c. he that distraineth shall not be charged, what hurt soever they receive.

VIII Bare hereditaments, that may be distrained for, are a Seigniorie, or rent charge.

IX. Seigniories are services, whereby Lands are holden:

X. Services are common to all certain estates, or proper to inheritances.

XI. Common, as Fealty and Rent service; whereof Fealty is incident to every such estate.

XII. And therefore the Seigniory or Tenancy being altered it must be done anew.

XIII. All other (both common and proper) grow by Reservation.

XIV. Fealty is an Oath to be faithfull to the Lord for the Tenements.

XV. Rent service, is a Rent to be paid to the Lord at certain set times:

XVI. And

XVI. And to this place we may refer all services that lie in Fesance.

XVII. Of which kind two amongst the rest are specially to be considered, *viz.* Frank Almoign, and Divine Service.

XVIII. Frank-Almoigne, is when a man of the Church holdeth freely in Alms, for which he is bound to lay Prayers.

XIX. But because the Prayers are not limited in certain, he neither shal do Fealty, nor is subject to distres.

XX. The lord must warrant such a Tenant against himselfe and his heirs, and save him harmlesse of all manner of all services against the Lords above.

XXI. Divine service is a spirituall kinde of service limited in certain.

XXII. These are the services whereby every certain estate may be holden.

XXIII. There follow those proper to Inheritances, the Grantee whereof shall hold of the Grantor by such services, as he holdeth over, if other services be not reserved.

XXIV. Or the Grantor may appoint him to hold of the next Lord.

XXV. A Mesn must acquit the Tenant of all manner of services against the Lords Paramont.

XXVI. But Donors in Frankmarriage cannot hold but by Fealty, and that of the Donor, untill the Fourth degree be past, who must also acquit them of all manner of services.

XXVII. One that holdeth of the King as of his person alienating the Free hold without licence forfeiteth the Land.

XXVIII. Services proper to Estates of Inheritance are Homage and Suit or Court.

XXIX. Homage is an Oath of fidelity acknowledging himselfe to be the Lords man, In the doing whereof the

the Tenant must be ungirt, uncovered, kneel upon both knees, and hold both his hands together between the Lords hands, sitting before him.

XXX This is to be done to the Lord himselfe, and but once during the Tenants life.

XXXI. The Kings Chamberlain shall take homage for him.

XXII. When an Inheritance descendeth to Coperceners, the eldest only shall do Homage.

XXXII. But if they hold of the King, all of them must do it.

XXXIV. When one and his Ancestors, whose heire he is, have held by homage of a Lord and his Ancestors whose heir the Lord is, time out of mind, and the Lord hath received homage, that bindeth him to warrant and acquit the Tenant.

XXXV. Suit of Court is a service by comming to the Lords Court: And here Land in the Lords hands (whereof severall men hold by Suit of Court) is termed a *Mannor*, but the Land considered apart from the service is termed *Demesnes*.

XXXIV. The particular kinds of services (whereby Lands of inheritance are distinguished) are Soccage and Knight-service.

XXXVII. Both draw unto them certain commodities to the Lord, partly in the Tenants life, and partly after his death.

XXXVIII That in his life is reasonable *Aide*, or Portion towards the making of the Lords eldest Son a Knight; and towards the marrying of his eldest daughter.

XXXIX. The other after his death, are wardship and reliefe.

XL. Wardship is the custody of the body and land of the heir within age, which shall be til fourteen of a woman.

Re-

XLI. Relief is a Portion to be paid by the heir to the Lord.

XLII. Soccage is tenure to be done out of Ward.

XLIII. Where the next of the kinne, to whom the Inheritance cannot descend, shall have the heirs wardship till fourteen to the heirs own use.

XLIV. Here, for releif the Lord shall have presently so much as one years rent amounts unto.

XLV. Tenure by Soccage in cheif giveth the King primer-seisin, or the value of that Land by a year if the heir be of the age of fourteen year, at his ancestors death.

XLVI. Knight service is a service touching Warre to be done by the body of a man.

XLVII. To all Knight service Homage is incident.

XLVIII. Here the Wardship is the Lords to his own use, and that till, 21. of an heir male.

XLIX. The wife shall be barred of her Dower, so long as she detained the heir from him.

L. Wardship of the body giveth the wards marriage to the Lord.

LI. If one hold sundry Lands of diverse Lords, the wardship of body goeth to the Lord of that Land, which the tenant held first; and this is termed, Tenure by priority.

LII. The King shall have the wardship of the body, though the tenure of him be by Posteriority.

LIII. The eldest child, being heir apparant to his father, shall not be in ward for his body during his Fathers life.

LIV. Tenure by Knight service in cheif, giveth to the King the wardship of all other Lands also.

LV. It giveth him likewise Primer seisin, or the value of them all by half a year, if the heir were in Ward by a whole year, if he were not; which Primer seisin must be paid and relief also.

Re-

LVI. Relief, for Land holden by Knight-service amounteth to an *C.s.* for a whole Knights fee, to a *C.* Marks, for a Baronie, and to a *C.* Pounds, for an Earledome.

LVII. If The heir be within age at the Tenants death no relief shall be paid to the Lords that are to have the Wardship.

LVIII *Grand Serjancie, viz. Tenure of the Kings person, to do to him a more speciall service whatsoever by the person of a man, is a speciall Knight service in chief, where the King in stead of relief shall have the value of the Land by a year.*

LIX. Rent charge is a Rent with Liberty to distrain.

CHAP. 8.

Rent seck Common.

I. BAre Hereditaments concerning land (for which no distresse can be taken) are a Rent Seck, and Common.

II. A Rent Seck is a Rent without liberty to distrain.

III. When a rent is granted for equaliy of Partition, amongst Copercencrs, this rent may be distrained for though no such liberty be granted.

IV. The grant of a Seigniorie, Rent charge, and Rent Secke, as also of a Remainder or Reversion of any of these, or of the land it selfe, is nothing worth without Attornment, *viz.* agreement of the tenant, that presently must be charged.

V. In the grant of a reversion depending upon a Freeho'd, the Attornment of the Freeholder is sufficient though he be not the Tenant, that presently must be charged.

VI. Common is a profit to be taken in anothers Land.

CHAP.

CHAP. 9.

Villenage, Annuity, Corodie Office.

I. BAre hereditaments that concern the person are meerly of the person himself, or by reason of the person.

II. of the first sort are Villeins.

III. A Villein is such a servant, as himself, and whatsoever he possesseth is the Lords if he claim it.

IV. *The Lord cannot sease his villein in the the Kings presence.*

V. The children of a Villein are also Villeins.

VI. Villenage beginneth by confessing a mans self to be one in a Court of Record.

VII. A Villein is manumitted or set free, when the Lord enableth him to possesse any thing against himself.

VIII. Those by reason of the person are Annuities and Corodies, or Offices.

IX. Annuitie is a yearly rent to be had of the person of the Grantor.

X. Corodie is a Portion for ones sustenance.

XI. Office is a duty of attendance upon a charge.

CHAP. 10.

Franchises.

I. BEsides the Hereditaments already handled, there be certain other derived from the Kings Prerogative, which are termed Franchises.

II. A Franchise is a Royall priviledge in the hand of a subject.

III. It may be forfeited by misusing of it.

IV. The kinds of Franchises are divers, and almost infinite.

V. Of such sort are Warrens, Markets, Faires, Toll of every buyer for things he buyeth there, not being for his

his own expences, and whatsoever liberties or commodities else, that (created at first by the Kings speciall grant, or of their own nature belonging to him) are given to common persons to have any manner of estate in.

CHAP. II.

Chattels, Reall, and Personall, Testament, Bailment, Contracts, Actions, Arbitrement.

I. SUch then is the nature of an hereditament in his sundry sorts and kinds;

II. Chattels are possessions, wherein there cannot be severall estates.

III. All ones Chattels, whether in possession, or that any is indebted to him in, may be given away or devised by his Testament.

IV. Testament is the appointment of some person to administer them for him after his death who therefore is called an Executor.

V. the Executors must prove the Will (to be a true one) in the spirituall Court, and be sworn to see it performed.

VI. If many Executors be made, and one refuse, yet he may administer at his pleasure.

VII. But an Executor once administring, can never refuse after.

VIII. Executors must answer all certain duties of the Testator.

IX. But so as duties, that grow by specialties are to be answered before other duties, and legacies to be last of all delivered.

X In these devises the Testators intent (standing with the rules of Law) shall be taken.

XI The Executor of an Executor is Executor to the first Testator.

XII If no Will be made, the Ordinary shall administer all the Chattels that were in his possession.

But

XIII. But whether any Will be made or no, his wife and such children as are not advanced by him in his life shall have a part to their own use, *viz.* one third of all (after the debts paid) to his wife; and another third part to his children: *This seems to be the ancient Common Law by Mag. Charta, cap.* 18. *See F. N Br.* 122. *I.*

XIV. Chattels are real, or personal.

XV. Real, as terms for years, and Wardship.

XVI. Personall, as Plate, Jewels, Gold, Silver, Implements of Housholld, Cattel, and all goods and movables whatsoever, corn sown upon the ground, &c.

XVII. The owner-ship of a Chattel personal is termed a property, which of wild beasts cannot be in any, nor after they are made tame, longer then they remain in ones possession.

XVIII. *Treasure in the earth, and* Treasure Trove, *or Coin being found, is the Kings.*

XIX. *Cattel also, that stray into anothers land, are the Kings after a year and a day, if being proclaimed at the Market in two severall Towns next adjoyning, the owner do not claim them.*

XX. *Goods wrecked are also his.*

XXI. *The King being Tenant in Common of an intire Chattel personall, shall have the whole.*

XXII. Goods, that belong to an Alien enemy, any body may seize to his own use.

XXIII. The taking of goods by an Alien enemy in Battail, devesteth the property from the owner, if he come not before Sun-set to claim them.

XXIV. Church-wardens are enabled to have goods to the behoof of the parish.

XXV. To Chattels personal, Bailment, and Contract do belong.

XXVI. Bailment is a delivery of goods in possession, and is either to keep, or to imploy.

XXVII. To keep, when onely the Custodie is committed

mitted to him, and is a simple Bailment or pledge.

XXVIII. A simple Bailment, when he receiveth them to keep for another; whether it be for the Bailer to re-deliver him again, or for a stranger to bail them over to him.

XXIX. A Pledge is when he received them in assurance for another thing had of him at the time.

XXX. The Bailment of goods to imploy is, when the Bailee hath the things themselves to use to anothers profit.

XXXI. Contract is a mutuall agreement for the very property of personall things.

XXXII. Here the duty growing upon it cannot be apportioned.

XXXIII. Of this kinde of contracts are buying and selling, borrowing and lending, and such like.

XXXIV. The sale of another mans goods in Market overt alereth the propertie, if toll be paid for them.

XXXV. Hither belong certain (as it were) Contracts in law, though not arising from the special agreement of the parties: as Trover and conversion, &c.

XXXVI. These are the things that belong to Chattels personal in generall, for the intereſt of personal things uncertain, Accord and Arbitrement lie.

XXXVII. Accord is an agreement between the parties themselves upon a satisfaction executed.

XXXVII. Arbitrement is an award of satifaction by others, whom they choose to judge between them.

XXXIX. The award of a personal Chattel altereth the property thereof.

CHAP. 12.

Treſpaſſe upon the Caſe.

1. WE have hitherto spoken of posſeſſions, (being the first and hardeſt part of the law;) The other

other remaineth, which miniſtreth juſtice in the puniſhment of offences.

II. An offence is the doing of any wrong, and it is a wrong without force, or to the which force is coupled.

III. In thoſe of the firſt kinde, the offender is to be amerced, *viz.* to pay a petty ſum of money to the King, and if he be a Peer of the Realm, then C. S.

IV. The Kings wife ſhall never be amerced.

V. Offences without force are Treſpaſſes upon the caſe, or Real wrongs.

VI. Treſpaſſe upon the caſe is ſuch an offence whereby any thing is endamaged, and it is a miſuſer, or deceit and conſpiracie

VII. Miſuſer, when by meer wrong it is endammaged.

VIII. Of this kinde there be many, and thoſe of divers ſorts; as if a man maliciouſly utter any falſe ſlander to the endangering of one in law.

IX. The touching of him with ſome heinous crime.

X. The impairing his trade of life.

VI. If one having another mans goods, convert them to his own uſe.

XII. If a Sheriffe ſuffer one in execution for debt to go at large.

XIII. If a Smith prick my horſe, or kill him in cure.

XIV. If being committed to the Gaole, the Gaoler of malice puts upon me ſo many Irons, or otherwiſe uſeth me ſo hardly, that I become lame thereby, &c

XV. But two above the reſt do here require more eſpecial conſideration, *viz.* Diſturbance and Nuſance.

XVI. Diſturbance is the hindring of that, which in right belongeth to one to do.

XVII. Nuſance is annoyance done to ones hereditament.

XVIII. All manner of Nuſances are to be removed, and common nuſances any man may pull down.

Deceit

XIX. Deceit is when the damage groweth by an under slight; As if in play one win anothers money by false dice or if he that selleth any thing, do upon the sale, warrant it to be thus and thus, whereby the other is deceived.

XX. Conspiracie is, where two or more conspire to do one wrong, or the like.

XXI. There are certain other offences against the Law, which are in the nature of trespasses upon the case, and by the Kings prerogative punishable like to them.

XXII. Of this sort are Nonsuit in an action, fault in the Original writ, or (by the Sheriffe) in the return of a writ, making default when he should appear, and whatsoever other offences (not being with force and armes) which offer no direct injury to a common person.

CHAP. 13.

Discontinuance, Disseisin, Usurpation, Intrusion, Abatement.

I. Hitherto of Trespasses upon the case: A reall wrong is that which medleth with the Free-hold otherwise then it ought.

II. A reall wrong is a discontinuance or an Ouster

III. Discontinuance is when he that hath an estate Tail, or a Fee-simple in an others right, maketh a larger estate of the land then he may.

IV. Warrantie of an estate of Inheritance, or for life descending upon him, that ought to have such an estate maketh a discontinuance.

V. Discontinuance taketh away the entry of those that come to have title after the death of the discontinuer.

VI. If he (whose entry is barred by a descent or discontinuance) have the Free-hold cast upon him by a new title, he shall be in of his ancient title, which is termed a *Remitter*.

VII. Ouster is, when the Free-holder is put out.

The

VIII. This Ouster is of a Free-hold in deed, or in land.

IX. Of the first sort are Disseisin and Usurpation.

X. Disseisin is the Ousting of him that hath free-hold in deed, by putting or holding him out of the land.

XI. This may be also of a rent or other profit out of land, by disturbing him in the means of comming to it: as

XII. In every rent Encloser and Forestaller.

XIII. Encloser is, when the tenant incloseth the land, so as he cannot come to distrain or demand it.

XIV. Forestaller is, when the tenant beseetteth the way with force and armes upon his comming.

XV. Of this nature is the menacing of him, when for doubt of some bodily hurt he dare not come.

XVI. In a rent service, and rent charge, Rescous and Replevin.

XVII. Rescous, when either the party having distrained, the distresse is rescued, or being upon the land to distrain, cannot be suffered to do it.

XVIII. Replevin is, when an action of Replevin is brought upon a distresse taken.

XIX. In a rent charge, and rent seck, Denier.

XX. Denier is, when the rent (being demanded upon the land (is not paid.

XXV. Usurpation is, when the Church becommeth full by the presentment of a wrong Patron, and the Institution of the pattie presented by the Ordinary.

XXII. But against the King Induction onely doth it.

XXIII. Of the second sort are Intrusion and Abatement, being of a free-hold in Law.

XXIV. Intrusion which is after the death of the tenant for life.

XXV. Abatment, which is after the death of one that hath the Inheritance.

CHAP. 14.

Treſpaſs, Menaces, Aſſault, falſe Impriſonment, Battery, Mayhem, Rape.

I. Such is the nature of an Offence without force.

II. An Offence with force is a Treſpaſſe or an Offence againſt the Crown.

III. Treſpaſſe is a criminall Offence puniſhable by a Fine to the King.

IV. For this the party muſt be impriſoned, untill he do compound.

V. Treſpaſſes touch Poſſeſſions, or the perſon.

VI. Poſſeſſions, when the wrong is done in them, namely, in Goods, or Lands.

VII. Treſpaſſe in Goods is the wrongfull taking of them with pretence of Title.

VIII. And therefore ſuch a Treſpas altereth the property of the Goods.

IX. Treſpaſſe in Land is, when the Treſpaſs is done upon the actuall poſſeſſion thereof.

X. Beaſts and other Chattels may be diſtrained by him that hath damage by them.

XI. Hither belongeth Ejectment, when a Termer for years of Land is ouſted.

XII. *Here the King having poſſeſſion none can put him out*

XIII. Treſpaſſes to the perſon are with pretence of violence, or violence in deed.

XIV. Pretence of violence, as Menaces and Aſſaults.

XV. Menaces are threatning words of beating one, or ſuch like; through fear whereof ones buſineſſe is foreſlowed.

XVI. Aſſault is an unlawfull ſetting upon ones perſon.

XVII. Hither belong, lying in wait, beſetting his Manſion-houſe, and not ſuffering his Servants to go in and out, *&c.*

Violence

XVIII. Violence in deed is false-imprisonment, or bodily hurt.

XIX False-imprisonment is an unlawfull restraint of liberty.

XX. Bodily hurts are either outward violencies only, or Rape.

XXI. Outward violencies onely are Battery and Mayhem.

XXII. Battery is the wrongfull beating of one.

XXIII. Mayhem is the wrongfull spoyling of a member defensive in fight.

XXIV. Rape is the carnall abusing of a woman against her will.

CHAP. 15.

Offences against the Peace.

I. BEsides these Offences (being for the most part) twixt party and party, there are other Offences to the damage of the publike in the nature of Trespasses, and are tearmed *Contempts*.

II. These Offences are punished not only by fine, but sometimes by corporall pain, and sometimes by losse of member.

III. As the Common-wealth is a body politick, which consists of the King, as the Head, and of his Subjects as the Members thereof; so are these Offences to be distributed.

IV Publike Offences against the King are, to disobey the Kings Command, by his Writ, or Proclamation, to disobey any thing ordained by Statute, &c.

V. And therefore the Sherif that serves not the first Writ, makes a contempt.

VI. Publike Offences to the body of the Common-wealth, are first those which trench against the domesticall safety thereof, as against the *heart* of the Common-wealth.

VVhich

VII. which safty consists, in this, that there be *pax domi*, and threfore here, the offences are Rebellions; Insurrections Riots, Routs, unlawfull assemblies, breach of the Peace; and good behaviour, false newes, Barratrie, Evel-dropping, &c. Also all tresspasses with force, which may be prosecuted by Indictment as well as by the suit of the party grieved.

VIII. An unlawfull assembly is, when above the number of two assemble together, with purpose to do some unlawfull act.

IX. Rour, when they set forwards to do it.

X. Riot, when they do it in deed.

XI. In the second place come the offences, that are against the strength of the Realme, and the defence thereof against forraign enemies, as against the hands and armes of the Common-wealth.

XII. Of this sort are these; to send victual or armour beyond sea, in comfort and aid of the Kings enemies, To go beyond sea, without the Kings license, whereby the King and the Realme may be enfeebled, &c.

CHAP. 16.

Against Justice.

I. THe third sort are offences against the justice of the Realm, as against the thighes and legs thereof; as

II. Judges which delay or pervert Justice.

III. Officers Negligent or corrupt, who do not execute their offices as they ought to do.

IV. Goalers, who by fear of punishment cause their prisoners to become provers to accuse others, or teach the Lay-people in their custodie to read for the salvation of their lives.

V. Enditors, who give warning to Enditees, whereby the Council of the King and the Justices is discovered.

He

VI. He that by negligence or voluntarily ſuffers one under arreſt to go at large.

VII. And here if the arreſt be for ſelonie, ſuch voluntary eſcape is ſelonie.

VIII. Hither alſo all manner of extortion in Officers is to be referred.

IX. A Juror, that appears, and is challenged, and afterwards, when he is found indifferent, and is called to be ſworn makes default: He ſhall be fined to the value of his land by the year.

X. All force againſt the Juſtice of the Realm.

XI. The breaking of Priſon: and here, if it be by the party himſelf, it is ſelonie.

XII. Reſcous, when a ſtranger, or the party himſelf diſturbes the arreſting of a ſelon or other.

XIII. Affrayes in diſturbance of Juſtice, as

XIV. Such as come forcibly into the Kings Court in affray of the peace, ſo as the Jurors dare not give their Verdict.

XV. Such as are evil people to beat the people of the Court, Jurors of Enqueſt, or any other.

XVI. To go armed in the Kings palace.

XVII. He that ſtrikes a man in Weſtminſter-hall ſhall loſe his right hand.

XVIII. He that ſtrikes a Juror in the preſence of the Juſtice ſhall have the ſame puniſhment, and beſides ſhall ſuffer perpetuall impriſonment.

XIX. Conventicles, which comprehend conſpirators and confederators.

XX. Such as receive people to their avowment, to maintain them right or wrong.

XXI. Maintenance, when a man maintains a ſuit in law.

XXII. Champarty, when he maintains it, to have part of the thing ſued for.

XXIII. Offences in favour of malefactors, as

Miſ-

XXIV. Misprisions, *viz* the concealment of Treason or felonie, whereof the first is punishable by perpetuall imprisonment.

XXV. Theft-boot, when a man takes his goods from a theif with purpose to favour and maintain him; The punishment whereof is ransome and imprisonment.

XXVI. Not assisting the Sherife, Constable, or other officer.

XXVII. Contempt of Justice, as

XXVIII. Such as flie for fear, when Treason, or Felonie is done by any.

XXIX. Such as in case of Treason or Felonie tarry the Exigent.

XXX. Such as suffer themselves to be out-lawed.

XXXI. The King may imprison the body of him that is outlawed, untill he purchase his Charter of pardon.

XXXII. Perjurie and subornation of perjurie.

XXXIII. Forgerie.

XXXIIII. All other falshood in matter of justice.

CHAP. 17.

Against, the Wealth of the Nation.

I. THe fourth kinde of publique offences are such as are committed against the flourishing estate of the Realm, as against the Colour and sanguine complection thereof.

II. And this, in divers manners, as well in matter of Traffick, buying, selling, and the like, as otherwise.

III. In matter of Traffick buying and selling, &c. as

IV. Practices, which tend to make the commodities of the Realm more dear, as,

V. To transport the commodities thereof without the Kings licence, or paying his Customes.

VI. Fore-stallers, Regrators, and Ingrossers, under which all Monopolies are comprehended

VII. Conspiracies of Merchants, Tradesmen, and the

the like, who by Combination amongst themselves, put certain prices upon Commodities, which are to be sold.

VIII. False VVeights and Measures.

IX. Out of the course of Traffick, as

X. Things which tend to the destruction of the commodities of the Realm, as

XI. Depopulation of Towns, and the like.

XII. Burning of a dwelling house, or of a Barn neer adjoyning thereunto.

XIII. Burning Corn in a Barn, or the like.

CHAP. 18.

Publike Nusances.

I. IN the sixth and last place are such Offences to be ranked, as are committed against the false passages and wayes of the Country, as against the feet and foes of the Common-wealth, as

II. Bridges, Cawseys, High-wayes, Streets, &c. broken, or out of Repair.

III. To this place common Nusances, Purpresture, *&c.* may be referred.

IV. Such Nusances any man may abate.

V. And as to Nusances, there is a writ in the Register.

VI. Where a Lazer or Leper will go in publike, the VVrit *de leproso amovendo* lyes to remove him out of the company of men to some solitary place.

CHAP. 19.

Felony, Fealty, Man-slaughter, Murther, Burglary, Robbery.

I. THus far of Trespasse, it remaineth to speak of Offences against the Crown, which are criminall Offences punishable by death.

II. *Here also all the Offenders both Hereditaments and Chattels, not only in possession, but such also as he hath but a Right to, are forfeited to the King,* viz.

Here-

III. *Hereditaments. from the time of the offence, and chattels from the time of the attainder onely.*

IV. In these and all other forfeitures, the Town is chargable with the goods.

V. The blood also here corrupted.

VI. The wife looseth her Dower.

VII. *Those that flie for fear of the offence forfeit their chattels to the King.*

VIII. Accessories after the fact viz. witting maintainers, and such as voluntarily suffer one arrested to escape are guilty of the same offence.

IX *Concealing the offence forfeiteth chattels, and hereditaments also during life.*

X. Offences against the Crown are felonie or, High Treason.

XI. Felonie is an offence of the Crown not immediately bent against the State.

XII. Here, the forfeiture of the offenders inheritance is given to the Lord.

XIII. *The King is also utterly to waste the Inheritance.*

XIV. Felonie is bare felonie, or petty treason.

XV. Bare felonie is a felonie of the lowest nature, and is punishable by hanging.

XVI. This is single or mixt.

XVII. Single, as stealth and man-slaugher.

XVIII. Stealth is the wrongfull taking of goods without pretence of title.

XIX. Inne-keepers must answer for goods of their guests stolne.

XX. *Goods confiscated which, the theif attainted for stealing another thing, disclaimeth to have any property in, and waifes, viz. which a theif waiveth, ove the Kings, if he seize them before the party from whom they were stolne.*

XXI. But if the party from whom they are stolne seize them first, or doing his diligence to apprehend the

thief,

theif, convict him afterwards, upon an appeale, he ſhall have his goods again.

XXII. The ſtealing of goods which exceed not the value of 12*d*. (termed petty Larcenie) doth onely forfeit chattels;

XXXIII. Man-ſlaugher is the killing of any perſon born into the world.

XXIV. But it one live a year after the act committed, which was the cauſe of his death. it is not felonie in him that did the Act.

XXV. The killing of one by chance in doing a lawfull act, or in his own defence, flying as far as he may to ſave his life, forfeiteth onely chattels.

XXVI. But the killing of one that attempteth to rob him, (whether upon the high way, or when men come to his houſe, and compaſſe it about to burn it, though they do not burn it, whereupon he iſſueth out and killeth one of them) is neither felonie, nor cauſeth any forfeiture at all.

XVII. Any unreaſonable thing killing a man, it and everything moving with it, is forfeit to the King, and theſe are termed Deodands.

XXVIII. Man-ſlaughter is Chance-medly, or Murder.

XXIX Chance-medly is man-ſlaughter without former malice.

XXX. Murder is man-ſlaugher upon former malice.

XXXI. He that murdereth himſelf (we call him *Felo de ſe*) doth onely forfeit his chattels.

XXXII. Mixt felonie is that kind of bare felonie, which riſeth from the former, and it is Robbery or burglary.

XXXIII. Robbery is ſtealth from ones perſon by aſſault in the High-way.

XXXIV. Burglary is the night breaking of an houſe

house with an intent to steal or kill, though none be killed, nor any thing stolne.

CHAP. 20.

Petty-Treason.

I. THus much of bare Felony: Petty-treason is a Felony of an higher nature then bare Felony is, the punishment whereof is burning.

II. This is against mortall Creatures, or against God.

III. Against mortall Creatures as Petty-treason (properly so called) and Sodomy.

IV. Petty-treason (properly so called) is the killing of any to whom private obedience is due; as one's master, mistres, Husband, &c. for which (in stead of burning) a man shall be drawn and hanged.

V. Sodomie is a carnal copulation against nature *viz.* of a man or woman in the same sex, or of either of them with beasts.

VI. Against God is that, which is immediatly bent against his Majestie, as heresie and Sorcery.

VII. Heresie is a presumptuous oppugning of an Article of faith.

VIII. In case of heresie, the party, before he can be burnt, must be convict in a Provincial Synod, and after abjuration make a relapse into the same, or some other Heresie.

IX. Sorcery is a consulting with Devills, and containeth under it Conjuring, Necromancy, and such like.

CHAP. 21.

High Treason.

1. HIgh Treason is an offence of the Crown directly bent against the State.

II. Also to kill the Chancellour, Treasurer, a justice of either Bench, a justice in Eyre, of Assize, or Oyer and Terminer being in their places, and doing their Offices, is High Treason.

Here

III. Here the punishment is, by drawing, hanging, and quartering for a man, and drawing, and hanging a woman.

CHAP. 22.

Courts of Record, Court Baron, County Court.

I. Thus we have gone through both the parts of the Law; there remaineth yet one generall, and common Affection scattered throughout the whole law (as the blood is through the body) which we call *Action*.

II. Action is the handling of a cause in controversie before certain Judges, who (in respect of the place where they are set to do justice) are commonly called a *court*.

III. Of all apparant faults proceeding from the Action, the Court must take notice.

IV. Every Court hath power to award forth precepts, and if the precept be not served, another of the like nature shall go forth, untill it be served.

V. To every Court do belong Clerks and Officers.

VI. A Clerk is he that serveth for things to be done in Court,

VII. Any errour that appeareth to the Court to be the Clerks mistaking, may be amended at any time.

VIII. Officers are those, who are to serve the Courts precepts, and to certifie the Court thereof.

IX. Courts, are Courts of Record, or Court Barons.

X. Of Record, which are the Kings Courts.

XI. These have such credit, that no averment can be taken against any thing there entred, or done.

XII. Things also, that cannot be granted but by deed, passe here by matter of Record.

XIII. *The King taketh hereditaments by matter of Record onely.*

XIV. Villennage beginneth onely by confessing a mans self to be one in a Court of Record.

XV. Duties of the Teſtator growing by Record muſt be anſwered by Executors before other duties. *See Bankrupts* 34.

XVI. Courts of Record, are the Parliament, or Courts that have ordinary juriſdiction.

XVII. The Parliament is a Court of the King, Nobility, and Commons aſſembled, having an abſolute power in all cauſes.

XVIII. *Statuts of reſtraint binde not the King unleſſe they concern the Common-wealth, or be be ſpecially named.*

XIX. *He may licenſe things forbidden by the Statutes,*

XX. *But where the Statute ſaith his licenſe ſhall be void, there it muſt have a clauſe of* Non obſtante viz. *this clauſe, notwithſtanding any ſtatute, &c.*

XXI. Courts of Record, which have ordinary Juriſdiction, are either general whoſe juriſdiction extends throughout the Realme, or but within ſome Countie.

XXII. The former are thoſe that are holden in *Term* time only, the whole year having four Terms *viz.* Michaelmas, and Hilary Term, Eaſter and Trinity term, and every term ſeverall dayes of Return.

XXIII. Michaelmas term (begining the 10 of *October*, and ending the 28 of *November*) hath eight Returns *Octabis Michaelis, Quindena Michaelis, Tres Michaelis, Menſe Michaelis, Craſtino animarum, Craſtino Martini, Octabis Martini, & Quindena Martini.*

XXIV. Hilarie term (begining the 23 day of *January*, and ending the 12 of *February*) hath four Returns, *Octabis Hilarii, Quindena Hilarii, Craſtino Purificationis, & Octabis Purificationis.*

XXV. Eaſter term (beginning 17 dayes after Eaſter and ending the Munday next after Aſcenſion day) hath five Returns, *Quindena, Paſchæ, Tres Paſchæ, Menſe Paſchæ, Quinque Paſchæ, & Craſtino Aſcentionis.*

XXVI. Trinity term (beginning 12 dayes after Whitſunday, and continuing 19 dayes) hath five Returns

turns, *Octabis Trin. Quind Trin. Crastino Johannis Baptistæ. Octa. Johannis Baptistæ, Quindena Iohannis Baptistæ*

XVII. To these Courts belongeth the power of sending forth Writs.

XXVIII. A writ is a Latine letter of the Kings in parchment, sealed with his seal.

XXIX. All writs have a salutation, *Rex*, to such an one *salutem*, and a conclusion expressing the place, as *apud Westmonasterium, &c.* and the time (both day and year) of making it; if it be returnable, the day of the return is also appointed in it.

XXX. The third writ (termed the *Pluris*) not served, is a contempt.

XXXI. And therefore the third writ hath alwayes this clause in it, *vel causam nobis significes*; so may the second (termed the *Alias*) also have if the Plaintiffe will.

XXXII. The Officer of these higher Courts is the Sheriffe, to whom is committed the custodie of the Countie.

XXXIII. For matters spirituall the Ordinary is their Officer.

XXXIV These generall Courts are the Chancery and two Benches, the Kings Bench and Common place.

XXXV. Chancery, which dealeth in suits concerning the King.

XXXVI. Here the judge is the Chancellor, having the Custodie of the great Seal of *England*, under which pass all suits out of the Chancery with *Teste meipso.*

XXXVII. The Kings Grants are also entred of Record in this Court.

XXXVIII. Such grants are effectuall to passe a freehold, from the King without any Livery.

XXXIX. and being Matters of Record, they take

effect from the time of the Date.

XL. In default of a Chancellor the Lord Keeper of the great Seal hath his Authority.

XLI. The Keeper (or Master) of the Rolls is an assistant to his Court.

XLII. In the Kings Bench and common place, the Judges are one Chief Justice, and three (and sometime more) other Justices.

XLIII. The *Teste* of their writ is *Teste Johanne Popham*, the Chief Justice for the time being.

XLIV. The Kings Bench is that, which dealeth properly with pleas of the Crown.

XLV. The Common place, which dealeth properly with Common Pleas.

XLVI. *The King hath a proper Court of this kinde for all things touching his Revenues, called the* Exchequer.

XLVII. The Judges whereof are called Barons, being one chief Baron and three other.

XLVIII. And this also hath a Court of Chancery before the Chancellor and Barons of the Exchequer, called the Exchequer-chamber

XLIX. The escheator here is a speciall Officer, and hath a kinde of a Court for finding out the Kings title to lands, tenements, and other things.

L. Those Courts, which deal but within some County, are the Sheriffes Turn, and the Coroners Court.

LI. The Sheriffes Turn is a Court of Record for offences, which are common greivances.

LII. Whereunto every man of the age of 12 years and upwards (being within the Precinct) oweth suit; and must be there sworn to the Kings allegeance.

LIII. But Peers of the Realm are excepted.

LIV. The offender here shall be amerced, and distrained for that amerciament.

LV. The Coroners Court, is a Court for matters of the

the Crown, as Battery, Mayhem, Rape, Murder, &c.

LVI. Upon just exception to the Sheriff, processe out of the higher Courts shall be directed to the Coroners.

LVII. The Steward and Marshall of the Kings house have a Court for all personal Actions, and pleas of the Crown arising there.

LVIII. By reason of certain Franchises, grow two other Courts of Record, which deal within some certain Precinct, *viz.* a Leet, and a Court of Pipowders.

LIX. A Leet is a Court of Record, having the same Jurisdiction within an hundred, or some lesse precinct, which the Sheriffs turn hath in the County, the profit thereof being to a common person.

LX. A Court of Pipowders is a Court of Record, incident to Faires and Markets, for all Actions arising there, and the suit must at the same time be commenced.

LXI. The King (by commission under his Letters Patents) may erect other Courts at his pleasure.

LXII. Such were Justices in *Eyre*, and such are Courts of Record in Corporations and other places, by speciall Charter.

LXIII. These are the Courts of Record: a Court Baron is the Court of a common person.

LXIV. This Court is for personal accompts under forty shillings.

LXV. These cannot be kept oftner then every three weeks.

LXVI. The processe here is by precept to the Bailiffe.

LXVII. The Suitors are the Judges.

LXVIII. A Court-Baron is the Lords, or a County-Court.

LXIX. The Lords Court is either of a particular Mannor, or of an whole Hundred.

XXX. The Hundred Court is that, whereunto all

the Inhabitants within the Hundred owe suit.

LXX. The County Court, which is incident to the Sheriffe, and hath Jurisdiction over the whole County.

CHAP. 23.

Suits, Original Writs, Petitions.

I. OF an Action there be two parts, the suit and the judgment.

II. Suit, is the parties dealing in the Action.

III. Here for their help they are allowed Councel learned in the law.

IV. The Suit hath two parts, the beginning and the proceeding.

V. The beginning is the proper duty of the Plaintiffe.

VI. This also hath two parts; the first matter of the suit, and the originall processe.

VII. The first matter of the suit must alwayes be brought into that County, where the cause of Suit groweth.

VIII. The first matter of the suit is for every man, by writ out of the Chancery; or in Courts, where writs lie not, by Plaint or Bill; for the King alone, by Inquiry.

IX. In all of the first kinde the Plaintiffe must finde Surety (by some that will be his pledges) to prosecute the suit.

X. And these may be either to the Officer, or to the Court where the suit is.

XI. A poor man in stead of sureties shal give his faith to prosecute it.

XII. Writs that begin the suit, are original, or commissionall.

XIII. Original, which appoint the first Processe (if the Plaintiffe finde pledges) returnable in the Kings Bench, or Common Place.

This

XIV. This must be true Latine, and also formal.

XV. And it must expresse the name of Baptisme, and Sir-name, or (in lieu thereof) the name of dignity both of the Plaintiffe and Defendant.

XVI. Where there be many of one name, diversity of the names must be put by addition of Elder, younger, and the like.

XVII. The Kings servants in his Court, or others by special grace of the Chancellor may here be admitted to finde pledges in the Chancery.

XVIII. Writs original are concerning Common pleas, or appeals that concern life.

XIX. Those that concern common pleas lie not for, or against a feme covert without her husband.

XX. Many having or giving joyntly cause of Action may sue or be sued together in one.

XXI. Severall Actions of one nature may be joyned in one originall with severall *Præcipes*, or commandements to be executed.

XXII *Here in place of action against the King, Petition must be made unto him in the Chancery.*

XXIII *And that (in case of) hireditaments) though the King have granted the same away.*

XXIV. *Whereupen processe shall go out against the Grantee to maintain his title.*

XXV. But whilst personall things, seised for the King, remain in the Officers hands, the party that hath right may sue the officer, or disturb him to take the profits.

XXVI. Petition is a supplication declaring the parties right, where mention must be made of all the Kings title.

XXVII. The writs, which concern common pleas, are Real or personal, and they both are again *Præcipes* or *Si fecerit te securum.*

XXVIII. A *præcipe* is that which willeth the She-

riff to command the Defendant to do somewhat in certain, that the Plaintiff sueth for, which if he do not, then to serve the first Process.

XXIX. The form hereof is, *Præcipe* A, *quod reddat* B, *&c. Et nisi fecerit, &c. tunc summon, &c.*

XXX. A *Præcipe* is, a *Præcipe quod reddat*, or a *Præcipe quod faciat.*

XXXI. A *Præcipe quod reddat*, which lieth for things in render.

XXXII. A *Præcipe quod faciat*, which lieth for things not in render, viz. in Fesance, as a Writ *de consuetudinibus & servitiis, secta ad molendinam, &c.* or sufferance, as a *Quod permittat, &c.*

XXXIII A *Si fecerit te securum*; is that which willeth the first process to be served without more ado.

XXXIV. The form hereof is, *Si* A *fecerit te securum de clamore suo prosequendo, tunc summon, &c.*

CHAP 24.

Actions reall.

I. REall Actions, where a Free-hold shall be recovered, are Possessory, or in the right.

II. Possessory, which are to recover a Possession.

III. In the right, which are to recover a Possession mixt with the right.

IV. And both these may be of a possession or right in himself, or descended from his Ancestor.

V. Reall Actions in the right, are either founded upon the right, or for the meer right.

VI. Reall Actions, where the Free-hold shall be recovered, lye only against the Tenant of the Freehold.

VII. With the Free-holder may be joyned in Action any having Title to enter.

CHAP.

CHAP. 25.

Ad Terminum, quem præteriit, Entry ad communem legem, Causa Matrimonii prælocuti, Dum fuit infra ætatē, Dum fuit non compos mentis.

I. A Reall *Præcipe quod reddat*, is that which is for reall things in render, and it is a plea of land or other like *Præcipe*.

II. A plea of land, which is for land or other such things in demesne.

III. Where land in certain is demanded, it must alwayes be brought in a Ville, or place known out of any Ville.

IV. A plea of land is a writ of entry, or a writ shewing the demandants title.

V. A writ of entry is that, which is to disprove the tenants possession by the means of his entry.

VI. Wherein tenant in fee-simple demanding of the possession of his Ancestor, shall say in the writ, *Quod clamat esse Jus, & hereditatem suam.*

VII. A writ of entry is either against the first party, or in the degrees.

VIII. Against the first party, when it is against him to whom the first alination was, or that made the disseisin.

IX. That in the degrees, is in the *per*, or in the *per* and *cui*.

X. In the *per*, when he, against whom it is brought, cometh in immediatly under the first party, as heire unto him, or by alienation from him.

XI. In the *per* and *cui*, when he, against whom it is brought, cometh in immediatly under the first parties heir, or aliance.

XII. Writs of entry grow either without wrong at the first, or upon a wrong.

XIII. Those without a wrong at the first are grounded upon a determination of the first estate, or upon a disability in the person that made it. Up-

XIV. Upon a determination of the eſtate, either by reaſon of a particular eſtate ended, or a condition broken.

XV. Of a particular eſtate ended, is an *ad terminum qui præteriit*, or *Entry ad communem legem.*

XVI. Ad terminum qui præteriit is upon a deforcement by the leſſee, or a ſtranger, after the Leaſe for years or life expired.

XVII. Entry ad communem legem, is when a tenant for life doth alien and die.

XVIII. Of a condition broken, as *Cauſa matrimonii prælocuti.*

XIX. Cauſa matrimonii, prælocuti, is for a woman that giveth land to a man to marry her, and he will not.

XX. Thoſe grounded upon the diſability of the perſon, are a *Dum fuit infra ætatem*, and a *Dum non fuit compos mentis.*

XXI. Dum fuit infra ætatem is by the infant, when he cometh to his full age, upon an alienation by himſelf, or his anceſtor being within age.

XXII. But the clauſe that he is of full age, (*viz. qui plenæ eſt ætatis*) ſhall not be inſerted in the Writ, if either it be brought in the degrees, *per, cui*, or *poſt*, or upon the anceſtors alienation.

XXIII. Dum non fuit compos mentis, is upon the alienation of himſelf, or his anceſtor or being of *non ſanæ memoriæ.*

CHA

Cui in vita ſua, Cui in vita, ſine aſſenſu Capituli A writ of Intruſion, a writ of Entry in the quibus.

I. THoſe upon a wrong at the firſt, are upon a diſcontinuance or an Ouſter.

II. Upon a diſcontinuance, as a *Cui in vita*, or a *ſine aſſenſu Capituli.*

III. A *Cui in vita*, for the wife after the husbands death upon his alienation of her fee ſimple, fee tail, or free-

free-hold, or of such a Joynt estate in them.

IV. and in this writ, claiming a fee-simple, she shall say, *Quod clamat esse jus & hereditatem suam.*

V. If it be an estate of fee-simple, and she bring not (in her life time) a *cui in vita*, the heir shall have a *sur cui in vita.*

VI. And of this nature is a *Cui ante divortium*, when it is brought by the wife after divorcement, upon such an alienation, as before.

VII. A *sine assensu Capituli*, is for the successor of a Bishop, Abbot, Prior, Dean, Prebendary, Master of an Hospital, &c. after the discontinuance of the Predecessor.

VIII. Upon an Ouster, is either an Intrusion, or a disseisin.

IX That upon an Intrusion is called a writ of Intrusion, and is for him in the reversion or remainder in fee-simple or for life, after the death of tenant for life in Dower, or by the curtesie.

X. Upon a disseisin, is when the disseisin is done to him or his ancestor, as a Writ of Entry in the *Quibus* or (which is all one) in the nature of an Assize.

CHAP. 27.

A Writ of Ayel, Besaiell, Cosinage, Formedon, Escheat, Dower, a Precipe in Capite.

I. WRits that shew the demandants title are meer possessory or in the right.

II Meer possessorie are those, which are brought by the next heir upon an abatement after the death of any ancestor, other then his Father, Mother, Brother, Sister, Uncle, Aunt, Nephew, Neece, seized in demesne, as of the fee-simple, the day of his death: Of this sort are.

III. A writ of *Ayell*, after the death of his Grandfather or Grandmother.

IV. A writ of *Besayell*, after the death of his great Grand-

Grandfather or great Grandmother.

V. A Writ of Cosinage, after the death of his great great Grandfather, or Grandmother, or any other Collateral Cousin, save those above-mentioned in the second *Rule* of this *Chapter*.

VI. In the right, is that which is to disprove the right of the tenant, and is a writ of right in his nature, or a *præcipe in Capite*.

VII. A writ of Right in his nature, which sheweth how the demandants right is grown, and is a *Formedon*, or a writ of Escheat, and Dower *unde nihil habet*.

VIII. A *Formedon* is a *præcipe quod reddat*, entitling the partie by the form of the gift, and is a *Formedon* in remainder, or a *Formedon* in reverter.

IX. A *Formedon* in remainder, is for him in the remainder for life, or in fee, upon a lease for life expired.

X. A *Formedon* in Reverter is for the Donor after the estate in tail determined.

XI. A writ of Escheat, is for the Lord upon an Escheat.

XII. Dower *unde nihil habet*, is a writ for ones Dower, who hath received no part at all thereof.

XIII. A writ of Dower lieth against Gardein by Knights service.

XIV. A *præcipe in capite* is a *præcipe quod reddat* for the meer right of lands holden in chief.

CHAP. 28.

A writ of right of ward, and sur disclaimer.

1. OTher real *præcipe quod reddats* are those, which are in respect of a Seigniorie, as a writ of right of ward, and a writ of right *sur disclaimer*.

II. A writ of right or ward is to recover the wardship.

III. If it be for the recoverie of the wardship of the body, it lieth as well for Gardein in Socage, as for Gardein by Knight-service.

LV. But if it be for the recovery of the wardship of the

the land, it lieth onely for Gardien by Knight-service.

V. A writ of right *sur-disclaimer*, is for the Lord to prove the lands to be holden of him, when in Action, where the services should be recovered, the tenant in Court of Record disclaimeth to hold of him.

VI. If in this writ the Lord can prove the Land to be holden of him, he shall recover the Land it self.

CHAP. 29.

A writ de consuetudinibus et servicijs, secta ad molendinum, Quare impedit, Quod permittat, Curia Claudenda, Mesne, and *Warrantia cartæ.*

I. A Real *Præcipe quod faciat* is either to recover hereditaments, or some real things that concern them.

II. Those that are to recover some hereditament, demanding of ones own seisin, are in the *debet* and *solet*.

III. But demanding of the ancestors seisin, they are in the *debet* onely, and then are in all respects, as writs for the meer right.

IV. These are either in respect of a Seigniory, or to recover some other hereditament.

V. In respect of a Seigniorie, as a writ *de consuetudinibus & servitiis*, and a *secta ad molendinum*.

VI. A writ *De consuetudinibus & servitiis* lieth for the Lord that hath an estate for life, or a greater estate in the Seigniory, and is deforced of his services.

VII. *Secta ad molendinum* lieth for the Lord, when the tenants that hold of him by grinding their corn at his Mill, withdraw their suit and grinde elsewhere.

VIII. Those that are to recover some other hereditament are a *Quare impedit*, and a *Quod permittat*.

IX. A *Quare impedit* lieth upon a disturbance, where he or his ancestors, or those, from whom he claimeth, having at any time before presented to a Church, himself is now disturbed.

X. A *Quod permittat* lieth for one that hath common of pasture, for his beasts, being disturbed by a stranger,

so

so as he cannot use his Common.

XI. These are to recover some real thing concerning hereditaments, are a *Curia claudenda*, or a covenant real, and other writs sounding in that nature.

XII. Curia claudenda, lieth for a free-holder, when one that hath a Close next adjoyning to him, which he should keep inclosed, will not do it.

XIII. A writ of Covenant real lieth upon a Covenant to do a thing real, as to levie a fine of Lands, &c.

XIV. Writs in the nature of a Covenant real, are a writ of *Mesne*, and a *warrantia cartæ*.

XV. A writ of *mesne* lieth for the tenant against the *mesne*, when the Lord *Paramont* doth destrain the tenant whom the *mesne* ought to acquit.

XVI. A *warrantia cartæ* lieth for him that hath lands or tenants warranted unto him.

XVII. Here the warrantors hereditaments are liable to the warrantie from the time of the action brought.

XVIII. Upon these writs a fine may be levied.

XIX. A fine is the acknowledging of an hereditament in the Kings Court, according to the covenant, to be his right that doth complain.

XX. Here, one of them must needs have such an estate at the time of the fine levied.

XX. That whereof the fine is levied, or any thing contained in it, may be granted back again to the Conisor by the same fine,

XXII. Fines executed binde all persons, if claim be not made within a year.

XXIII. A Feme covert joyning with her husband in a fine, it bindeth her for ever.

XXIV. Therefore the Justices must examine her, to see that she do it willingly.

XXV. A grant by fine of a Seigniorie, rent charge, rent seck, remainder, or reversion, is presently good, saving for bringing actions that run in privity between the tenant and him.

CHAP.

CHAP. 30.

An Assize of Novel, Disseisin, Nusance, Darrein Presentment Juris, itrum, Partitione facienda, Nuper objit, Qu. Jure.

I. THus much of real *Præcipes*; Real *Si fecerit te securum* are an Assize, and a *Juris utrum*, or other.

II. An Assize is such a real plea meerly in possession.

III. And this is either an Assize of ones own possession, and an Assize of Mordanceſter, or an Assize of Darrein presentment.

IV. An Assize of ones own possession, is an Assize of novel disseisin, or an Assize of nusance.

V. An Assize of novel disseisin, is for a free-holder against his disseisor (whether it be of land or rent) for the Bailiff of the disseisor, if himself cannot be found.

VI This disseisin being of a rent-charge or rent seek, all the tenants of the land must be named, though he were disseised by one tenant only.

VII. If the lord distrain the tenant too often for the rent or services, the tenant may have an Assize.

VIII. An Assize of nusance is for him, whose freehold is spoiled by any nusance.

IX. An Assize of his ancestors possession onely, called an Assize of Mordanceſter, is for the next heir upon an abatement after the death of his Father, Mother, Brother, Sister, uncle, Aunt, Nephew, or Neece, who was seized in demesn, as of fee-simple the day of his death.

X. An Assize, which may be either of his own or his ancestors possession, called an assize of Darrein presentment, is upon a disturbance, when himself or his ancestor did last present.

XI. A *Juris utrum* is such a real plea, founded upon the right of a Parson or Vicar upon his predecessors alienation.

XII. This is the nature of an Assize, and *Juris utrum*

trum: These that follow are a *partitione facienda*. and *nuper obiit* (both which lye between privies in blood) or a *Quo jure*.

XIII. A *Partitione facienda* lyeth between Coparceners to compel partition to be made.

XIV. Therfore here for equality of partition, things that otherwise cannot, may be granted without deed.

XV. A *Nuper obiit*, lyeth against one privy in blood, that entreth after the death of the Ancestor, that died seised in demesne.

XVI. A *Quo jure* lyeth for the Tenant of the land, when one challengeth Common, there to try whether in right he ought to have any, or no.

CHAP. 31.

Debt, Detinue, Account, Covenant.

I. THus far of reall Actions: A personall Action is that, wherein damages shall be recovered.

II. This Action being once suspended, is gone for ever.

III. Executors bringing such an Action must do it in all their names, as well of those that refuse administration, as of the rest, but an Action may be brought only against those that do administer

IV. In personall Actions growing in respect of a possession in Common, Tenants in Common are in all respects as Joynt-tenants.

V. In personall *Præcipes* damages only shall be recovered, where the thing it self cannot be had.

VI. Personall *Præcipes quod Reddat's* are debt, and detinue.

VII. Debt, when any thing is due upon a contract.

VIII. If the debt be money due one from another in their own right it is in the *debet* and *detinet* otherwise in the *detinet* only.

IX. *When any of the Kings Goods come into a Subjects hands,*

hands, his land at all times after is chargeable for the same into whose hands soever afterwards it comes.

X. Of this nature is a writ of Annuity, which lieth for him that hath an Annuity, be it money or other things, as cloaths, bread, &c.

XI. This writ is in the *debet* for any other thing, as well as for money, and not in the *detinet*, therein differing from an action of debt.

XII. Detinue is, when any thing is with holden.

XIII. Personal *Præcipe quod faciats*, are an action of accompt, and an action of covenant.

XIV. An Action of accompt, which is for an accompt to be made.

XV. The King may have it against Executors, and so can no other.

XVI. An Action of Covenant, which is for a Covenant to be holden.

CHAP. 32.

Personall Si fecerit Securum's.

I. PErsonal *Si te fecerit Securum's* are of things done without force, or where force is coupled with it.

II. Of those without force, some go not so far as breach of the peace, others do break it.

III. Those that break not the peace, are these that follow.

IV. Rationabili parte bonorum, for the wife and children of one deceased, to have their part of the goods.

V. Valore maritagii for Guardian in Knight-service when the heir at full age refuseth to satisfie him for his marriage.

VI. A writ of forfeiture of marriage, which is to recover the double value against such an heir, marrying himself within age, without the Lords assent, and at full

age putting out the Lord.

VII. Intrusion of ward, when the heir by Knight-service entreth, and puteth out the Lord.

VIII *Ejectione custodiæ*, for any Guardian by Knight service or soccage, against a stranger ejecting him of the land, or body of the heir, or both.

IX. *Quare ejecit infra terminum* for lessee for years, against the feoffee in fee, or for life of his lessor.

X. Here the term it self shall be recovered, if it be not past.

XI. Trespas upon the case of things not against the peace, as *Assumpsits*, for an assumption, or promise to be performed, and the like.

XII. This lieth not against Executors.

XIII. Here, and in all other actions of trespasse upon the case, the writ must comprehend all the matter of substance.

XIV. The other that break the peace, but not *vi*, are called trespasses against the peace.

XV. And of this kinde are especially (of the nature of such a trespasse) an action of deceit, and an action of conspiracie.

XVI. An action of deceit, is upon any deceit committed.

XVII. Here, if it be upon a non-summons in a plea of land, whereby he looseth the land by default, or such like, it must be brought during the life of the Summoners.

XVIII. In a writ of deceit the Plaintiffe shall recover all that he hath lost.

XIX. Conspiracie (in the nature of a trespasse) is upon conspiring by many to prejudice a man wrongfully.

XX. Such are trespasses without force, is an Action of trespasse coupled with force, is an action of trespasse for a trespasse done.

An

XXI. An Action of treſpaſſe brought in a Court Baron muſt not ſuppoſe it to be done by force and armes.

XXII. And therefore no *Capias* lieth there in ſuch caſe.

XXIII. Speciall actions of treſpaſſe are theſe that follow.

XXIV. De Parco fracto, for taking diſtreſſe out of the Pound.

XXV. Relcous, for taking a diſtreſſe away before it be impounded.

XXVI. Ejectione firmæ, when leſſee for years of land is ouſted, where the term it ſelf ſhall be recovered if it be not paſt.

CHAP. 33.

Appeal.

I. THeſe are Common Pleas: an Appeal that concerneth life, is the parties private action, proſecuting alſo for the Crown, in reſpect of a felonie.

II. Appeals of the death of a man are given to the heir of the party ſlain.

CHAP. 34.

A Writ of right Patent, and juſticies.

I. THus far of original writs: Commiſſional are theſe, which are not returnable but determinable before the parties to whom they are directed.

II These are Commiſſionary, or meer Commiſſions.

III. Of the firſt ſort are thoſe that give authority to a Court Baron to hold plea.

IV. Here the ſuitors are the Judges, not the Sheriff or Steward.

V. Theſe are a writ of right Patent, or a *Juſticies*

VI. In both these the same course is holden, as in those that went before.

VII. A writ of right patent is a writ for the meer right of Tenements holden of a common person, to be brought in the Lords Court of that Mannor.

VIII. If he hold noe Court, or otherwise yield his Court to the King for that time, then it may be in the Kings Court with this clause, *Quia B. capitalis Dominus nobis inde remisit curiam.*

IX. This writ must shew by what service the land is holden.

X. The writ remaineth alwayes with the party himself.

XI. If one privie in blood, not past the third degree, enter after the death of the ancestor, that died not seized, in such case, a writ of right patent is called a writ of right *de rationabili parte terræ.*

XII. A woman that hath received part of her Dower, shall have a writ of right of Dower patent for the remnant, whereof she is to be endowed.

XIII. A *Justicies* is a writ, that giveth the County Court power to hold plea.

XIV. And therefore it is called a Viconte writ; of this sort are.

XV. An Assize of petty nusance, where a mill, or such like is levied to ones nusance.

XVI. All of them are comprehended in these Verses

rica ca gultum ges lendinum
Fab, fur, porta, domus, vir, gur, mo, murus ovile,
Et pons: traduntur hæc vicecomitibus.

XVII. Admeasurement of Dower by the heir, when his Guardian, or himself endowed the wife in his nonage of more then she ought to have.

XVIII. Admeasurement of pasture by a Commoner, whom another Commoner wrongeth, by putting in more Beasts into the Common then he should.

Here,

XIX. Here, all the Commoners shall be admeasured.

XX. A *nativo habendo* for the Lord, that hath an Inheritance in any Villein, when his Villein departeth away from him.

XXI. Here, if the Villein plead that he is frank, the Sheriff cannot proceed.

XXII. *Rationalibus divisis*, for that Lord, whose land or waste hath by little and little been incroached upon within time of memorie until now, by a Lord, whose Seigniory adjoyneth in another ville, against the Lord so incroaching.

XXIII. A *homine replegiando*, for one imprisoned, or in prison deteined, where he should not.

XXIV. A *Replevin*, for goods or chattels distreined,

XXV, This may be both by writ and plaint in any Court Baron, as well as in the County Court.

XXVI. This being by plaint; it shall not proceed, if any thing touching the freehold come in question.

XXVII. Upon the *pluris* not served by the Sheriff, his power is determined, and the parties shall plead in Bank.

XXVIII. Many of the actions, that went before both for real things to be done, as *Consuetudinibus & servitiis, secta ad molendinum, Quod permittat*, Meine Dower, *unde nihil habet*: And also personal actions, as annuity, debt, detinue, accompt, covenant, trespasse to what summe soever, may as well be brought in the County by *Justicies*, as to be returnable in the Common Place.

XXIX. Meer Commissions are these that follow, being all of them to be directed to choice persons, such as it shall please the King.

XXX. Oyer and *Terminer*, to heare and determine upon some heinous offence committed.

XXXI. In these and such like commissions lie pro-

perly, a writ of Association, and *Si non omnes*.

XXXII. Association is a writ for other to be associate into their company.

XXXIII. Si non omnes, is a writ for the rest to proceed, although the other come not.

XXXIV. Ad quod damnum, to enquire what hurt it may be to the King, Country, or any other, for the King to grant such, or such a thing.

XXXV. Perambulatione faciendâ, to enquire of the bounds of 2. Seigniories or Townes, where an incroachment by little and little is supposed to have been made.

XXXVI. This must be by the mutual assent of both Lords.

CHAP. 35.

Plaints, and Bills.

I. SO far of writs; it followeth, to speak of Plaints and Bills, both being in such Courts as hold plea without original writ.

II. A plaint is in matters that concern Common pleas.

III. A Plaint of trespasse in a Court Baron shall not proceed, if the freehold come in question.

IV. A Bill is in pleas of the Crown, as an appeal of felonie, mayhem, rape, &c. may be by Bill before one Coroner of the County, finding first sureties to the Sheriffe.

V. One whose attendance is necessary in any Court shall sue, and be sued there in form of Plaint, which is called a Bill of *Priviledge*.

CHAP. 36.

A Quo Warranto, *Office, Indictment.*

I. *THe King hath a speciall means of suit for trying of the right of Franchises, usurped upon him, called a* Quo Warranto, *and is to be brought before the Justices in Eyre.*

II An Enquiry for the King is, when matter for the King is found by a Jurie, called an *Enquest of Office*.

This

III. This may be before the Officers, as Sheriffs, Escheators, Coroners, &c. *Virtute officii*, *Brevis*, or *Commissionis*, to them directed.

IV. Here, the number of twelve is not of necessity requisite.

V. An Enquiry is an office, or presentment.

VI. An Office, which findeth matter to intitle the King to some possession.

VII. Upon as high a matter of Record to avoid the Office, as the Office it self, a man may traverse it.

VIII. If the office be for personal goods, the party may alwayes have a traverse, or plead any matter unto it, unless the Escheator have accounted for them; and that although the office finde the Kings title to be by matter of Record.

IX. The King upon office finding for him, if his entry be lawfull, and the possessions to be had at the time, is presently in possession.

X. Also he shall be answered all the mean profits from the time of his title.

XI. Upon an office found *virtute Officii*, whereby the King is intitled to ones wardship, the heir shall never have *livery*, *viz.* the land delivered out of the Kings hands.

XII. But upon a perfect office, *Virtute Brevis*, or *Commissionis* (if it be a speciall writ or Commission, not a general one to inquire of all wards) he may.

XIII. Therefore here the heir is allowed these Commissions following, or writs in the nature of such Commissions, *viz.* 1. For finding of an office for the King. 2. For the having of the land out of the Kings hand.

XIV. Those for the finding of an office are *Diem clausit extremum*, *Mandamus*, and *Deveneruns*, to inquire, what lands holden of the King, and what of others, the ancestors was seized off, the day of his death, who is his next heir, and of what age.

XV. The *Diem clausit extremum* is to be sued within the year after his death.

XVI. The *Mandamus* is after the year; and here, it must further be inquired, who took the profits.

XVII. The *Devenerunt* is, when the ancestor dieth in ward to the King.

XVIII. Upon defect in Offices found by vertue of such writs or commissions, these writs following shall issue out to make them perfect, *viz.*

XIX A *Quæ plura*, upon leaving of any land out in these offices.

XX A *Melius inquirendum*, upon any other defect in the Office.

XXI. A *Datum est nobis intelligi*, upon an Office finding lands to be holden of any other person, when there is a Record to prove, that they are holden of the King.

XXII. The writs for having the lands out of the Kings hands, are an *Ætate probanda*, and a writ of *Livery*

XXIII. An *Ætate probanda*, is to inquire whether hebe of full age, or not.

XXIV A writ of *Livery* is after a perfect Office, finding a tenure in cheif; to have all the lands delivered to him at once by the King.

XXV. Two being found heirs by one and the same title, The King shall not make Livery, until by enterpleader the truth be discussed at his full age, that was found heir first.

XXVI. Amongst Co-parceners the King upon Livery shall make partition.

XXVII. He that holdeth of the King by Knight-service, but not in Chief, shall not sue Livery. But when he cometh to his full age, shall have an *Ouster le main.*

XXVIII. A presentment is an enquiry finding some offence

offence againſt the King, which is alſo called an Indictment.

XXIX. Every ſtrong ſuſpition of ſuch offence appearing of Record hath the force of an Indictment.

XXX. Without an Indictment the King can have no ſuit upon a wrong done, principally to another, but done to himſef, he may.

XXXI. For the preventing of divers offences, *viz.* treſpaſſes to the body and felonies, and committing them that offend to priſon, untill they may be indicted, and ſo duely puniſhed, every Hundred hath his High Conſtable, and every ſeveral tithing within the Hundred hath his petty Conſtables, or Headboroughs,

XXXII. Any man, ſuſpecting another of a felonie committed, or but intended, may arreſt him.

XXXIII. With indictments of treſpaſſe, informations upon penal Statutes (ſuch as inflict a pecuniarie mulct, or other penalty upon offenders) have a neer affinity.

XXXIV. Indictments of the death of a man are to be taken before the Coroners.

CHAP. 37.

Proper Original Proceſſe.

I. HItherto of the firſt matter of the ſuit; it followeth to ſpeak of original proceſſe.

II. Original proceſſe is, that proceſſe, which is untill the defendant do appear.

III. Original proceſſe is proper or improper.

IV. Proper, which is to bring ſome matter into Plea or ſolemn action; and it is ſingle, or mixt.

V. Single, which is by the poſſeſſions onely (lands or goods) or onely by the perſon.

VI. That by the land is of two ſorts, firſt, ſummons and Grand *Cape* in a real *Præcipe quod reddat.*

VII. The ſummons is the warning of the tenant in his

his land by certain ſummoners.

VIII. The ſummons upon an action brought againſt one as heir, muſt be in the land that did deſcend.

IX. If it be to recover the freehold of land it ſelf, it muſt be in the ſame land.

X. A Grand *Cape*, is to take the Land into the Kings hands by the view of lawfull men, with a ſummons of the tenant to anſwer, as well to his default, as to the demandants action.

XI. If the tenant be returned, ſummoned, where in deed he was not, the writ ſhall abate.

XII. Secondly, it is ſummons and re-ſummons, in a Mordanceſtor, *Juris utrum*, and an Aſſize of *Darrein* preſentment, and upon default the enqueſt awarded.

XIII. Original proceſſe by the goods, as in Aſſizes of *novel diſſeiſin*, and nuſance, where the original proces is *Pone per vadios &c. ſalvos plegios.*

XIV. A *Pone per vadios & ſalvos plegios*, is a procels to attach the defendant by certain of his proper goods, being meer perſonal chattels, which he ſhall forfeit, if he appear not, and upon ſuch default the Inqueſt (ſummoned by the writ) is preſently to be awarded to recognize the Aſſize.

XV. The original proceſſe by the perſon is a *Capias*, (which is a proceſſe to impriſon him) then an *exigent* or ſolemn demand at five ſeverall County Courts immediately following one another, and for not appearing, *Outlawry*.

XVI. This Judgment of Outlawry is given by the Coroner in the fitt County, and is onely in mayhem, felonie, and treaſon.

XVII. If the *Exigent* be returned not fully ſerved without any folly in the Plaintiffe, he bringing an *Exigent de novo*, before any other County holden, ſhall have the benefit of the former Counties.

XVIII., Outlawry diſableth him from ſuing any action,

By

XIX. *By Outlawry all his chattels are forfeit to the King, even such as he hath but a right unto.*

XX. In Mayhem there must be three *Capias, viz. Capias, alias, & pluries*) two in Felonie, *viz.* Stealth Robbery, and Burglary) and onely one in the death of a man, and high Treason.

XXI. In felonie and Treason, they that tarry the Exigent forfeit their chattels.

XXII. A mixt original processe is that which is so by his goods, as for want of goods, resort may be made somtimes to his land, and somtimes to his person, and somtimes to both.

XXIII. Those of the first sort are in all other real actions, and in all personal actions (except tresp as and offences against the Publique) and in all *Justicies Summons* by the goods, *Attachment*, (or a *Pone per vadios, &c.*) and a *distresse* infinite.

XXIV. Distresse infinite is a processe to distrein him continually after, till he do appear by certain of his goods and profit (or issues) of his lands, which he loseth if he appear not.

XXV. Upon his distresse must be returned in issues the value of all his lands from the *Teste* of the writ, until the day of the return.

XXVI. With these issues the land is chargable.

XXVII. In such processe as these, if the defendant be a beneficed Clerk, he must be warned by his person, or land, if he have any Lay-fee; otherwise, processe shall go out to the Ordinary to make him appeare by the issues of his benefice.

XXVIII. Here also, if upon the summons a *nihil* be returned, *viz.* that the party hath nothing whereby to be summoned, in such case there shall issue forth a continual *Capias*.

XXIX. But a *Capias* lieth not here against a Peer of the Realm, because by common intendment he must have free-hold.

In

XXX. In a Replevin in the County Court, if the goods be conveyed away, so as at the tenants suit they connot be restored, processe of *witherman* lieth, which is for the Plaintiffe to have of the others goods, until restitution of his own.

XXXI. Those of the second sort are, in all trespasses upon the case, and in all offences in the nature of trespasses upon the case, an *Attachment*, *distresse* infinite, and upon *nihil* returned a continual *Capias*, as before.

XXXII. Here for contempts a *Capias* lieth against Peers of the Realm.

XXXIII. Those of a third sort are, in trespasse *vi*, and offences against the publique; *Attachment*, *distresse* infinite, and upon *nihil* returned, three *Capias*, *Exigent*, and *Outlawry*.

CHAP. 38.

Improper Original processe Commandatorie.

I. THus far of proper original writs, which begin an Action, besides which, there are certain other originals out of the Chancery, which are not deductory to bring any matter into plea or solemn action, but only commandatory or prohibitory to do, or to leave something undone.

II. Upon these writs no processe lieth, and therefore they may be termed *Improper* Originals.

III. The Commandatory writs of this nature are these that follow.

IV. *De Dote assignanda*, which is for the wife of the Kings tenant, when the King is entitled, by office, to land, where she is dowable.

V. This writ is alwayes directed to the Escheator, and may be either to deliver her such part of her land, as is already assigned to her in the Chancery for her dower, or for the Escheator himself to assign her part unto her.

If

VI If her husband held in cheif, then she must first take an oath in the Chancery not to marry without the Kings license.

VII. *De Homagio capiendo*, which is for the tenant by Homage Ancestrel to compel the Lord to receive his homage.

VIII. *De scutagio habendo*, for the Lord to have Escuage of his tenants by Knights-service, when the same is due upon a Voyage Royal, &c.

IX. *De auxilio ad filium suum militem faciendum & filiam maritandam*, for the Lord to have such aid of his tenants where it is due.

X. *De Corodio habendo*, to have a Corodie for his servant.

XI. *De annua pensione habenda*, to have a pension granted to his Chaplain, until he be promoted to a benefice.

XII. *De libertatibus allocandis*, for one single person, or bodie corporate impleaded before the Kings Justices, to have the liberties formely granted unto them, to be allowed:

XIII. *De executione judicii*, to have a judgment executed: and this is a *Justicies*.

XIV. *De restitutione temporalium*, where the temporalties before seized into the Kings hands are to be restored to a Prior, or Bishop elect and consecrate.

XV. *De securitate pacis*, for him that is in fear of corporal hurt, or of the burning of his houses, to be secured of peace in that behalf, against the party, whom he feareth, where a corporal oath must be taken by him, that standeth so in fear.

XVI. *De vi laica removenda*, to remove all Layforce in any Church.

XVII. Of cleansing streets, to have the wayes, streets, and lanes of a Town corporate to be made clean when they be apt to cause infection by their nastinesse and stench,

De

XVIII De leproſo amovendo, to remove a Leper or Lazer (that will come abroad) from the company of men to ſome ſolitary place of abode.

XIX De excommunicato capiendo upon a *ſignificavit*, *viz.* the Ordinaries certificat e into the Chancery, that one excommunicate ſtandeth out 40 dayes, to impriſon him, until he ſatisfie holy Church: And this writ alſo is a *Juſticies*.

XX. De excommunicato deliberando, to deliver him out of priſon, when the Church is ſatisfied.

XXI De cautione admittenda, when one taken by an *excommunicato capiendo* offereth ſufficient pledge or caution to obey holy Church, which is refuſed, to have that caution addmitted, and to be delivered.

XXII. De hæretico comburendo, to cauſe one convicted for an heretique to be burnt.

XXIII. De coronatore eligendo, to chooſe a Coroner in full County by the free-holders of the County.

XXIV. De coronatore exonerando, to diſcharge a Coronet of his Office upon juſt cauſe.

XXV. This writ is directed to the Coroner himſelf.

XXVI. De electione viridariorum Foreſtæ, to chuſe a Verdor of the Foreſt.

XXVII. De exonerando viridario Foreſtæ, to diſcharge a Verdor of the Foreſt.

XXVIII Conge d' eſlire, to Dean and Chapter (or ſuch like) to chuſe their Biſhop.

XXIX. A writ for the Royall aſſent to ſignifie to the Ordinary his aſſent to the election of an Abbot, &c: and to will him to execute that which belongeth unto him.

XXX. This is alwayes directed to the Ordinary himſelf.

XXXI De ſecuritate invenienda, quod non ſe divertat in partes exteras ſine licentia Regis, to compel one to find ſufficient mainpernors in a reaſonable ſum of money

money, not to go in forreign parts without the Kings licenſe, nor any thing there to attempt in contempt or prejudice of the King, or hurt of the people; nor to ſend any thither for any ſuch cauſe.

XXXII. All *Dedimus poteſtatems*, the principal of which are theſe that follow.

XXXIII. *Dedimus Poteſtatem*, to give the Kings Royal aſſent to the election of an Abbot, or the like made, or to be made, and to ſignifie ſo much by his letters to the Ordinary, that he may do that which belongeth to him, and to receive fealty, &c, Commanding the party to do the premiſes.

XXXIV. *Dedimus Poteſtatem de fine levando*, to certain perſons to take the acknowledgment of a fine out of Court, when one that hath agreed in the Kings Court to levie a fine, is ſo feeble, that he cannot travel.

XXXV. The Cheif Juſtice of the Common Place may take the acknowledgment of a fine without any *dedimus poteſtatem*.

XXXVI. *Dedimus Poteſtatem de Attornato faciendo*, for the Judges to admit an Atturney for one in a ſuit.

CHAP. 39.

Improper Original Proceſſe Prohibitorie,

I. PRohibitorie improper original writs are theſe that follow;

II. A Protection *cum clauſula nolumus*, to free ones poſſeſſions, that nothing be taken againſt his will for the Kings buſineſſe.

III. Parſons, or other ſpirituall perſons not to be charged to the payment of fifteens for goods in their poſſeſſions, annexed to their Churches.

IV. *Quod Clerici non elegantur in Officium Ballivi*, for a Clerk not to be choſen an Officer for his lands.

V. A prohibition to forbid tenant in Dower, or by courtehe

courtesie of *England*, or Guardian by Knight service, or in soccage to commit waste to the destruction of the Inheritance.

VI. A *Quo minus*, for grantee of Estovers, to restrain the grantor from committing waste, so as he cannot haue estovers.

VII. *De exoneratione sectæ*, for tenants by suit of Court, or other services, that they be not distreined to do the same for such time, as they ought to hold the land discharged.

VIII. *De exonerando pro rata*, to discharge the tenant of parcel of the Land, according to the rate of his land, when he is lawfully distreined for all the rent and services.

IX. *De essendo quieto de Tholonio*, to Officers not to grieve spiritual persons, and others, that ought to be quit of paying of Toll, Murage, Pannage, Pontage &c.

X. *De non ponendo in Juratis*, to discharge Peers of the Realm, and other persons priviledged from being of Juries, unlesse their presence be for any speciall cause necessary.

XI. *Ne exeas regnum*, to the party himself to inhibit him from going into forreign parts without the Kings license.

CHAP. 40.

The Count, and Pleading.

I. THus far the beginning of a suit: the Proceeding followes, which hath two parts: The Count, and the Pleading.

II. A condition (annexed to an estate of freehold) cannot be alleadged in Count or pleading, unless it be by Deed.

III. The Count is a larger declaration of the substance of the original writ, and therefore is usually termed a *Declaration*.

IV. In reall actions, which are in the right, the demandant

mandant must alledge the taking of the profits, called *Esplees*, in the declaration.

V. In stead of the Count a plaint shall be made in Assizes of novel disseisin, and in writs of Dower a demand.

VI. Pleading is the parties debating of the suit.

VII. Every plea must be offered to be proved true by saying in the plea, *Et hoc paratus esse verificare*, and this is termed an *averment*.

VIII. An advantage of a matter, which cannot be pleaded, shall be saved by protesting, not acknowledging it to be true, although the matter pleaded passe against him.

IX. Pleas are either of the defendant, when he is first brought in to answer, or the mutual pleas of both.

X. In a joynt action against two or more, one of them appearing shall not answer, till the other come in to answer, or the suit be finished against him, as by death, outlawry &c.

XI. An action by, or against an Infant, as heir, shall not proceed, till his full age, unlesse it be apparant, that by proceeding he cannot be prejudiced.

XII. But in a writ of Dower an Infant heir shall not have his age.

XIII. The defendants first pleas are dilatory, or to the Action.

XIV. Dilatory, which are before any plea in Bar.

XV. When an action is brought against many they must joyn in the plea, if they intend to plead these dilatories.

XVI. Dilatory Pleas are exceptions, or forein advantages.

XVII. Exceptions are dilatories grounded upon the matter it self of the suit; and are in disability, or abatement

XVIII. Thoſe in diſability are to the juriſdiction or perſon, both which muſt be before the Count.

XIX To the juriſdiction, when it is alledged that the Court ought not to hold plea of it.

XX. To the perſon, when it is alledged, that the Plaintiffe ought not to be anſwered, as if he be outlawed, excommunicated, &c.

XXI. But in caſe of excommunication the ſuit ſhall be put without day, onely till he be abſolved.

XXII. Thoſe in abatement are for any fault in the firſt matter of the ſuit.

XXIII. For this cauſe the defendant may have *Oyer* of any thing tendred by the Plaintiffe, and not being parcel of the Record, as of the writ, condition, &c.

XXIV. Pleas in abatement are to the Count firſt, and then to the writ.

XXV. Amongſt Pleas to the writ, exceptions that ariſe upon the view of the writ are to be pleaded before thoſe that are forein, as non-tenure, ſeveral tenancy, &c.

XXVI. Pleas to the Count, are for inſufficiencie, variance from the writ, &c.

XXVII. Pleas to the writ, are for default of form, falſe Latine, &c.

XXVIII By waging of law, for non-ſummons in a *præcipe quod reddat*, the writ ſhall abate.

XXIX. In Aſſize of novel diſſeiſin and nuſance, and in appeals of felonie, and *Juris utrum*, the defendant may have many pleas in abatement.

XXX. The writ abating for ſome cauſe, that cannot be imputed to the Plaintiffes folly, himſelf bringing another with ſpeed in the ſame Court againſt the ſame party, ſhall have all advantages of the former; and this is called a writ purchaſed by *Fourneys accompt*

XXXI. Forain advantages are delayes without exception to any thing; as in all actions, *Oyer* of the writ,

writ, &c. In real actions, view, aid, prayer, and voucher.

XXXII. View, is (in real actions) of the thing demanded, or of the land, whence it cometh, when it is so necessary, as without view the defendant cannot well answer.

XXXIII. Ayde prayer is for the tenant for life, to request him that hath the inheritance, to help him to plead: so must the Incumbent pray in aid of the patron and Ordinary.

XXXIV. Voucher is the calling in of one that should warrant, to answer the action.

XXXV. Here the voucher loosing, the tenant shall recover in value against him any hereditaments, that he had at the time of voucher.

XXXVI. Therefore voucher is in lieu of another action, where the original processe is *Summons ad warrantizandum*, and then a Grand *Cape ad valentiam.*

XXXVII. If one be vouched within age, it is a *summons ad habendum visum* first, and being awarded of full age, a summons *ad warrantizandum.* and Grand *Cape*, as before.

XXXVIII. But if he be awarded within age, the *parol* shall *demurre* until his full age.

XXXIX. If the summons *ad warrantizandum* or *habendum visum* be not served, then a *sequatur sub suo periculo* is to go forth, and if the tenant cannot get that served, he looseth his warranty; for it is *sub periculo* of the tenant.

XL. But in exchanges the hereditaments are liable from the very time of the exchange.

XLI. In partition amongst co-perceners from the death of the ancestor.

XLII. *The King shall not be vouched but prayed in aid off, which in case hath the force of a Voucher.*

XLIII. So is it also of co-perceners.

XLIV. In an Assize of novel disseisin, and nusance voucher lieth not, unlesse the vouchee be present in Court, and will by and by enter into warrantie.

XLV. He that is impleaded in any action, wherein he may vouch and doth not, shall never have the benefit of a *Warrantia Cartæ*

XLVI. Advantages in certain personal actions are Garnishment and Enterpleader.

XLVII. Garnishment is upon a writ of detenue, when it be alledged by the defendant to have been upon a bailment by the Plaintiff, and another, or for another upon condition, that other shall be brought in to shew whether by reason of that bailment himself, or the Plaintiffe ought to have the goods, chattels, &c.

XLVIII. Enterpleader is, when divers bringing several writs of detenue, ward, or *Quare impedit* against the same person in the same County, and for the same thing, the rest shall answer him, that brought the first writ.

XLIX. The King may appoint any place he thinketh good to be a safeguard for all offenders flying thither, that they shall not be molested, or compelled to answer, which priviledged places have in former times been called Sanctuaries.

L. Thus far of dilatory Pleas, Pleas to the action are such as go to the body of the matter, and are Pleas in Bar, or Confessions.

LI. Pleas in bar, are those, which are to bar the Plaintiffe of his action.

LII. In these the defendant must make defence, as to say, *Defendit vim & injuriam quando, &c.*

LIII. But no such defence shall be made in Dower, Assize of novel disseisin, *per quæ servitia*, or Attaint.

LIV. The tenant may plead a warrantie in bar of him that should warrant; if he bring the writ.

And

LV. And though the tenant of the land be a ſtranger to the warrantie, yet he may plead that he hath a third perſons eſtate, and ſo rebut by a warrantie, made unto that perſon.

LVI. But in writs of Dower the anceſtors warrantie is no bar.

LVII. A warrantie made by the diſſeiſor at the time of the diſſeiſin, barreth not the heir, and this is called a warrantie that commenceth by diſſeiſin.

LVIII. In an Aſſize of novel diſſeiſin and treſpaſſe the defendant pleading a title in bar, muſt give colour of title to the Plaintiffe.

LIX. In the giving of this colour, theſe three, things muſt be obſerved, 1. It muſt be to the Plaintiffe not to a ſtranger, or to the defendant, 2. It muſt be of ſuch a poſſeſſion, whereby he may maintain his action. 3. The Colour muſt be a matter doubtfull in law, or otherwiſe difficult to the Lay-people.

LX. In real actions for the meer right, when it is in reſpect of a diſſeiſin done, the tenant cannot traverſe the ſeiſin, but may tender half a mark to the King to have it inquired by the Jurie: and being found, that the demandant was not ſeized in the time, whereof he counteth, that ſhall bar him for ever.

LXI. *The tenant cannot tender half a Mark againſt the King.*

LXII. The heir or executors in an action brought againſt them (where they are chargable) pleading a matter in their own knowledge, which goeth in perpetual bar, ſhall be charged as in their proper duty, if it paſſe againſt them.

LXIII. In Aſſizes of novel diſſeiſin, nuſance, mort-danceſtor, *Juris utrum*, and in indictments and appeals of felony, the defendant may plead in abatement, and over in bar, or take the general iſſue alſo.

LXIV. In Aſſizes of novel diſſeiſin and nuſance,

he may plead a ſpeciall matter, that amounteth but to a generall iſſue.

LXV. Upon Indictments of felony and treaſon, the defendant being put to anſwer, is not allowed Counſel, if he denie the fact.

LXVI. A preſentment in the Leet or Sheriffes turn, after the day of preſentment bindeth the party for ever, and is not traverſable but in caſes that touch ones freehold.

LXVII. Therefore the courſe is, to remove ſuch preſentments into the Kings Bench by a *Certiorari*, where they may be traverſed.

LXVIII. Confeſſion is, when the defendant confeſſeth the Plaintiffes action to be good.

LXVIX. The defendant confeſſing an Indictment of felony may accuſe others of the ſame offence.

LXX. One that flying to a Church or Church-yard and confeſſeth before the Coroner, when he cometh the certainty of any bare felonie, where life and member is to be loſt, before he be thereof attainted, may abjure.

LXXI. Abjuration, is his oath before the Coroner himſelf to depart the Realm for ever at the time and place ſet him; going the direct way theither; tarrying there but one floud and ebbe, if he can have paſſage, and, till he can ſo paſſe, going every day in the ſea up to the knees to aſſay if he may paſſe over; and if he cannot paſſe within 40 dayes, then to put himſelf again into the Church as a felon, &c.

CHAP. 41.

Replication, Rejoynder, Snr-rejoynder, &c. the iſſue and demurrer.

1. THus far the Pleas of the defendant, the mutual pleas of both, are the debating before iſſue, or the iſſue it ſelf.

Debating

ij. Debating before iſſue, is the diſcuſſing of the material things to draw it to ſome one iſſue.

iij. Of the firſt ſort, are replication, rejoynder, ſurrejoynder, &c.

iv. In an Aſſize againſt many, if each take the whole tenancy ſeverally, and plead ſeverall matters in bar, or one *Nul-tort*, and the other in bar, the Plaintiffe at his peril muſt chooſe his tenant. And then after iſſue for the whole, the Tenancy ſhall be firſt inquired of, and being found for the Plaintiffe, then the other iſſue ſhal be enquired; but being found againſt him, and no title made againſt the tenant indeed, the writ ſhall abate.

v. In an action of treſpaſſe meer tranſitory, although the defendant juſtifie by any ſpeciall matter, yet the plaintiffe may take iſſue, that it was done *de ſon tort de meſne, viz.* wrongfully by the defendant without anſwering to that matter.

vi. If it be a treſpaſſe upon land, the defendant juſtifying in ſome other land then the Plaintiffe meaneth, the Plaintiffe may make a new aſſignment.

vii. An iſſue is, when both the parties joyn upon ſomewhat, that they refer to tryal to make an end of the plea.

viii. This iſſue, is of the fact or of the law.

ix. Of the fact, when the proper contradiction of that, which one alledgeth, is ſet down by the other.

x. After which, if any inſufficient pleading appear in the Record, whether the iſſue be joyned thereupon (which is called a *Jeofaile*) or no, the Parties muſt begin a new, where the firſt defect was.

xi. But no re-pleader ſhall be in an Aſſize, if the Plaintiffe have diſcloſed a ſufficient title.

xii. If the tender of this iſſue come on the plaintiffes part the form is, *Et hoc petit, quod Inquiratur per recordum* or *Patriam, &c.*

xiii. If on the defendants part then it is, *Et de hoc*

ponit se super recordum illud, or *super Patriam*.

XIV. Issue in a writ of Right cannot be joyned upon the meer right, but by the party himself, and this is called the joyning of the Mise.

XV. Where the Plaintiff in his his replication maketh title at large, the Tenant may joyn issue upon the title, by saying, *Veigne Assize sur le title*, and this is called a *Pleading to the action at large*.

XVI. But in a personall action, when the title of the Land cometh in question, it lyeth not till issue joyned, and yet in that case it never lyeth for Tenant for life, but only for tenant for years, Bailiff, *&c.*

XVII. *Aid in these actions shall be of the King before issue joyned onely.*

XVIII. This being a matter (*In fait*, *viz.*) done in the country is tryable by the oath of twelve free and lawfull men of the same County indifferently chosen.

XIX. Four of the Jury must be of the same Hundred.

XX. If the thing in issue lye in the notice of two severall counties, and not of one only, the Jury shall be made equall out of both.

XXI. But upon an Indictment of an offence against the Crown, the tryall shall never be by Joynder of Counties.

XXII. But if the Defendant plead in any Action, that the Plaintiff is a villeine regardant to a Mannor of his, in in another County, yet the same shall be tried in the County where the writ is brought.

XXIII. Where a Peer of the Realm is party to the Action, a Knight must be returned upon the Jury.

XXIV. In a Court of Pipowders, the tryall is by the Merchants.

XXV. The Jury in a writ of Right is called the grand Affize, being four Knights (or others in default of Knights) choosing of twelve unto them.

XXVI. This Jury is called the *Grand Assize*, because

cauſe it alwaies conſiſteth of more then 12. *viz.* of 16.

XXVII. Upon tryall by Jury, challenges are allowed for the parties (if they will) both to the *Array* & to the *Pols*, and are to be tryed by ſome of the jurors.

XXVIII. If it be before any Iurors ſworn, the Court ſhall chooſe Triers, but when any of the Iurors are ſworn they muſt try it.

XXIX. Challeng to the *Array*, is when the Jury is not ſufficiently impanelled.

XXX. Upon iuſt cauſe of exception to the Sheriff, & afterwards to the Coroner, the Court ſhall chooſe certain perſons to return the jury, who are called *Eſſiors*.

XXXI. And then the parties ſhall never afterwards make any challenge to the *array*.

XXXII. Challenge to the *Poll*, is, when any of the jurors are not fit to paſſe upon the triall.

XXXIII. This Challenge muſt be taken before the panell be peruſed, and ſhall be tryed by two of the jurors choſen by the Court.

XXXIV. But Challenges that ſound not in reproach of the juror, ſhall be examined upon his Oath which is called examination upon *Voire Dire*.

XXXV. He that challengeth the *array*, if it paſſe againſt him (or that he releaſe it) ſhall never challenge the *polls*, without ſhewing cauſe preſently, which ſhall be tryed out of hand.

XXXVI. After Challenge to a juror for one cauſe, which paſſeth againſt the Challenger, hee ſhall not challenge him for another.

XXXVII. In Indictments and appeals of felony, the defendant may challenge thirty five jurors without ſhewing cauſe, and this is called a *peremptory* challenge.

XXXVIII. When there lacketh ſome to fill the jury, others of the ſame ſort ſhall be taken till it be full, and they are called a *Tales*.

XXXIX. The *Tales* muſt be an even number, and leſſe

leſſe then the principal Pannel, as *Decem Tales, Octo Tales, &c.*

xl. Every *Tales* muſt be of leſſe number then the other, as after an *Octo Tales*, a *ſex Tales*, &c.

xli. But in Indictments and appeals, that touch life, a *Tales* may be of a greater number then the principal pannel.

xlii. The Jury being charged, may neither eat nor drink (but by leave of the Juſtices) before their Verdict given.

xliii. Doing ſo before they be agreed, it maketh their verdict void, but after they are agreed, it is onely finable.

XLIV. The Jury upon arraignment, acquitting one that was found guilty of the death of a man upon an enquiry before the Coroners *ſuper viſum corporis*, muſt finde who did the fact.

XLV. The Jury in an Aſſize of novel diſſeiſin ſhall inquire of the plea in abatement.

XLVI. And therefore in ſuch an Aſſize no plea in abatement is anſwerable.

XLVII. An Infant bringing an Aſſize, if a matter done in the ſame County be pleaded againſt him, the Jury ſhall inquire of all the circumſtances.

XLVIII. The like inquiry of the circumſtances ſhall be, if in an Aſſize brought againſt him, he plead to the Aſſize at large.

XLIV. If the tenant in a *mordanceſter* traverſe any point of the writ, yet the Jury ſhall inquire of all the points, and any one found againſt the Demandant abateth the writ.

L. For the better direction of the Jury in their verdict, greater liberty is permitted in pleading a matter doubtful in law.

LI. For ſomtimes a traverſe may be omitted.

LII. Sometimes alſo, the ſpeciall matter may be pleaded

pleaded together with the general issue.

LIII. Likewise the Court may be abridged before verdict, so as the original remain true.

LIV. After acquittal upon an appeal or indictment of felonie or treason, he shall never be drawn in question for the same offence again.

LV. In writs of right and in appeals, that touch life, trial may be by battail at the defendants choice.

LVI. The battail in a writ of right may be by Champions, who must be freemen.

LVII. Here, the demandants Champion must have seen him or his ancestors in possession, and thereof take his oath.

LVIII. The battail in an appeal must be in proper person; and therefore here the defendant is restrained from the choise of Battail (and must needs try it by Jury) if there be any notorious presumption of the fact in him, or imbecility in the Plaintiffe: Also against a Peer of the Realm bringing an appeal, the defendant shall not wage Battail.

LIX. In a writ of Dower, issue taken upon the death of her husband, shall be tried by witnesses.

LX. In some cases also the trial shall be by the defendants oath, as 1. Where the tenant in a *Præcipe quod reddat* alledgeth, that he was lawfully summoned according to the law of the land. 2. In meer personal contracts growing without deed, or privitie of others, the defendant may wage his law.

LXI. Therefore in such kinde of actions executors are not chargable.

LXII. *No wager of Law shall be against the King.*

LXIII. But wager of law may be upon plaints in Court Barons for personal things under 40 *Sh.*

LXIV. An issue of Law (returned a *Demurrer*) is, when admitting the matters alledged, either of them resteth

resteth in the judgment of the Court.

LXV. The *demurrer* being joyned upon an exception to the original it self, or Count for some fault appearing in them, doth onely drive the defendant to make a better answer (which is called a *respondes ouster*) if it passe against him.

CHAP. 42.

Appearance, Continuance, mesne, processe.

I. THus far concerning pleading; the other mean acts are appearance and continuance, or judicial processe.

II. Appearance, is the parties coming into the Court where upon common day given, the fourth day after the very day is allowed.

III. When the defendant appears not, as he ought, he is said to make default.

IV. When the partie for not appearing should have some great losse, or corporal pain, he may appear, though the Officers return force him not to it.

V. If the Plaintiffe will not appear, when he is demanded at the day, (which is termed a *Non suit*) or lay in Court; that he will not sue forwards, (which is a *retraxit*) this is peremptory, and looseth him his Action.

VI But in real Actions brought by many, if one will not prosecute, the rest may alone; except in a writ *de nativo habendo*, and that is *in favorem libertatis*.

VII. For executors also summons and severance lieth in personal actions.

VIII If the defendant will not plead (which is called a *Nihil dicit*) this in all actions is peremptory, and looseth the action.

IX. So in personal Actions, if he appear, and after plea or demurrer joyned, make default; this is also peremptory, and imports a *Nihil dicit*.

How-

X. Howbeit, either of the parties may for once be excuſed of appearance, if they demand it the firſt day, or any of the four dayes, unleſſe the other enter an exceception, that no Eſſoyn be received.

XI. Alſo upon every mean appearance a new Eſſoin lieth.

XII. And this is called an Eſſoin *de mal veniſ*, or the common Eſſoin.

XIII. Beſides this Eſſoyn, there are divers other for ſpeciall cauſes allowed, as of being beyond ſea, of going *ad terram ſanctam*, of the Kings ſervice, and *de malo lecti*.

XIV. Theſe laſt have a year and a dayes adjournment, where upon an oath muſt be taken that the cauſe is true.

XV. But no ſuch ſpecial Eſſoin lieth in an Aſſize of novel diſſeiſin, Dower, Aſſize of *Darrein preſentment*, and *Quare impedit*.

XVI. Continuance is from day to day till the end of the ſuit.

XVII. Here, if the Plaintiffe do nothing, it is called a *diſcontinuance*.

XVIII. and if any error be in the continuing, as by awarding a *Capias*, where a diſtreſſe ſhould be, it is called a *miſcontinuance*.

XIX. The ſuit of an excommunicate perſon ſhall be put without day, (termed *parol ſans Jour*) till he be abſolved.

XX. So it is alſo in all other caſes, which happen without the Plaintiffes folly.

XXI. After continuance taken, the defendant may for once, leave his former plea, and plead any thing, growing ſince this latter continuance.

XXII. Continuance is by proceſſe, or upon the *Roll*.

XXIII. That upon a Roll is the *dies datus*, or Emparlance.

Dies

XXIV. *Dies datus*, when the Court giveth the parties day, and this is alwayes before the Count.

XXV. Such a continuance by assent of both the parties is called a *Prece partium*.

XXVI. But in Assizes the continuance is, by a *Justiciarii nondum advisantur*, and not by a *Dies datus*.

XXVII. Emparlance is, when the defendant demandeth day, to see if he may end the matter without further suit, which he may do once, but not ofter without the Plaintiffes consent, and this is alwayes after the Count.

XXVIII. After Emparlance he cannot plead to the Jurisdiction or person, neither yet in abatement either of the Count or writ, nor demand *Oyer* of an Obligation, or the like.

XXIX. But after a special Emparlance, *Salvis omnibus advantagiis*, he may plead to the Count or writ, and also have *Oyer*; but not to the Jurisdiction or person.

XXX. In an appeal that toucheth life; if the defendant plead a plea, whereby his life should come in jeopardie, the Plaintiffe shall not imparle unto it, but must answer *sedente curia*.

XXXI. Default after Emparlance is peremptory, and looseth the action in all actions reall and personall.

XXXII. Judicial processe, is a processe out of that Court, where the original is returned, prolecuting the Action.

XXXIII. Judicial processe are mesne processe, or in nature of new originals.

XXXIV. Mesne processe, which is for any necessary act to be done, not onely for the Plaintiffe against the defendant, but for either of them against any other whose presence in the Court may be necessary for them.

Upon

XXXV. Upon a fine levied, before it be engroſſed, the writs to compel attornment are.

XXXVI. *Per que ſervitia*, when the fine is levied of a Seigniorie.

XXXVII. *Quem redditum reddit*, when it is of a rent charge or rent ſeck.

XXXVIII. *Quid juris clamat*, when it is of a remainder or Reverſion.

XXXIX. *In Petitions, or whatſoever the King (being made partie) may be at loſſe, A writ of ſearch lieth, which is to ſearch in the Treaſurie before the plea proceed if by likelihood ſome matter may be found there to maintain his title.*

XL. In real *Præciper*, where a freehold is to be recovered, upon default, after plea, iſſue, or *demurrer*, a *Petit Cape* ſhall go forth to cauſe the tenant to anſwer to the default onely.

XLI. So upon a voucher a *Petit cape ad valentiam.*

XLII. In ſuch as are for other hereditaments (ſave in point of Seigniorie) as annuity, *Quare impedit*, *Quo jure*, *Quod permittat &c.* upon default, as before, a diſtreſſe ſhall go forth in lieu of a *Petit cape.*

XLIII. The proceſſe againſt jurors is a *venire facias* to the Sheriffe to return them, at which day if they appear not, then a *Habeas corpora*, and after that a diſtreſſe infinite.

XLIV. In an action of treſpaſſe (alwayes) whatſoever the iſſue be, *releaſe, juſtification, &c.* and in debt, detinue, account, and other perſonal actions, which are for things in certain, if the iſſue be taken upon matter in *fait* onely, and the defendant make default, the jury ſhall be taken.

XLV. But if it be upon matter in writing, the plaintiffe may there pray judgment, if he will: howbeit,

If

if he do not pray it, the Jury shall be taken by default as in action of trespasse.

XLVI. But in Assizes of novel disseisin, nusance Mordancestor, Darrein presentment, and *Juris utrum* the original writ commandeth a jurie, as well as the defendant to be warned, which summons to the jurie serveth in stead of a *venire facias*, so that the processe here against the jury, is *Summons, Habeas corpora, & distringas.*

XLVII. And therefore here, upon default after that original processe ended, (*viz.* the Atachment in an Assize of novel disseisin, and nusance, and the summons and re-summons in a mordancestor, Darrein presentment, and *Juris utrum*) the enquest shall be taken by default.

CHAP. 43.

Commandatorie Judicial processe in the nature of new originals.

1. THus far of mesne process; Judicial process in the nature of new originals (in none of which any
II. Freehold shall ever be recovered, but damages onely) are these that follow; first, such as cmomand to do somthing, as,

III. Re-summons, and Re-attachment, to receive in the former plight a suit put without day;

IV. These may either revive the original alone, or the whole proceeding by speciall words.

V. All certificatorie writs.

VI. *Certiorari*, to remove a Record out of a Count of Record into the Chancery.

VI. Writs to remove suit out of the Court Barons.

VIII. These may be without shewing any cause in the writ, if the remove be at the Plaintiffes suit; but not without shewing good cause in the writ, if it be at the defendants suit.

These

VIII. Theie are to remove pleas, by writ, or by plaint.

IX. Of the first sort are *Tolt* and *Pone*.

X. *Tolt* or *Tollas* is for the Plaintiffe to remove a writ of right out of the Lords Court into the County Court.

XI. A *Pone* is to remove into the Common place in all other cases.

XII. But a *Pone*, to remove a Replevin by writ out of any other Court Baron, then the County Court, cannot be without shewing cause.

XIII. Of the second sort are a *Recordare*, and *Accedas ad Curiam*, in both which nothing but the plaint shall be removed.

XIV. A *Recordare* is to remove plaints in the County Court.

XV. An *accedas ad Curiam*, is to remove plaints in any other Court Baron.

XVI. This also (upon good cause shewed in the writ) lieth for a tenant to remove the plea in writ of right out of the Lords Court immediately into the Common place.

XVII. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.

XVIII. But the Chancelor may send such a Record by his own hands (without any *Mittimus*) if he please.

XIX. A *Procedendo*, to proceed in suits.

XX. Of this nature is a writ of consultation, to proceed in the spirituall Court when one suing there for matters belonging to that Court, is restrained to prosecute the suit

XXI. A writ of Mainprise, to set at liberty one bailable, finding bail to answer the action

XXII. Such persons bailable be they which are taken upon a *Capias* original,

XXIII. But not the defendant in appeal of mayhem, if the mayhem be heinous; nor the principall in an indictment or appeal of felony; nor the accessory after the attainder of the principall, nor any in high Treason.

CHAP. 44.

Other judicial Processe of the like nature.

I. A Writ of Recaption, for him whose goods being distrained before for rent, or services, are distrained again for the same thing; hanging the plea in the County Court, or before the Justices.

II. A Writ *de magna Assisa eligenda* to the Sheriffe, to summon four Knights to choose the Grand Assize, when the *Mise* is joyned thereupon in a writ of right.

III. And this is a meer Judicial writ issuing out of the Common place, when the Plea hangeth there.

IV. A Certificate of Assize upon an imperfect Verdict given in an Assize, to bring in the same Jurors to give a more perfect one.

V. A *proprietate probanda* unto the Sheriffe, to enquire whether the property be to the plaintiffe or defendant, when upon a Replevin sued, the defendant claimeth property.

VI. And this also may be meer Judicial, issuing out of the Kings Bench, or Common place, and returnable there.

CHAP.

CHAP. 45.

Prohibitory judicial proceſſe in the nature of new Originals.

1 SEcondly, hither belong ſuch Writs, as are prohibitory, or reſtrain from doing ſome thing, where the prohibition it ſelf is in lieu of a ſummons, and after that the proceſs is an Attachment and Diſtreſſe of this ſort are.

II. Prohibitions to reſtrain the party from ſuing in an inferiour Court, that ought not to hold plea of it.

III. Such a prohibition is an *indicavit* for the defendants Patron, when the right of advowſon in any part of ones tithes is in demand in a ſpirituall court, between two Clerks, claiming from ſeverall Patrons.

IV. A *Superſedeas*, to ſtay any further proceeding in a ſuit.

V. Of this nature are, a writ of peace, for the tenant upon a writ of Right brought in the Lords Court, vouching one to warranty out of the power of that court which is called a *Forraine Voucher*, or joyning the *miſe* upon the grand Aſſize, to have the matter reſpited, untill the Juſtices in *Eyre* come thither, which writ, if he bring not, after ſuch voucher or *miſe* joyned, he looſeth his tenancy.

VI. *De libertate probanda*, for the Defendant upon a *Nativo habendo* in the County Court, claiming to be frank, to the Sheriff, to adjourn the plea before the juſtices in *Eyer*.

VII. *Identitate nominis*, for one moleſted by a ſuit againſt another of the ſame name.

VIII. Protections *cum clauſula volumus*, when the King (in reſpect of the defendants being in his ſervice) taketh him into his protection for one year to be free from all ſuits.

IX. Therefore ſuch a protection ſhall for that time ſave all defaults.

X. Howbeit writs of Dower, *Quare impedit*, Assizes of novel disseisin, and pleas before the Justices in *Eyre* are accepted.

XI. This kinde of protection is double, *viz. Protectio quia profecturus*, when he is to go beyond sea in the Kings businesse.

XII. And *Protectio quia moratur*, when he stayeth there about it.

XIII. Of this nature also is a protection *quia in prisona*, when being sent beyond sea in the Kings ware, he is there taken and detained in prison.

XIV. *The King may take his Creditor into his protection, that no other Creditor shall sue or arrest him, till the King be satisfied.*

XV. *He may also by a writ called* Warrantia Dei, *(rehearsing that one which should appear, in proper person, is in his service) will, that for one day, no default be recorded, upon him.*

XVI. *Essoin de malo lecti*, which is a writ to warrant an Essoin of lying sick a bed, cast by the tenant in a writ of right; Commanding four Knights to see him; and if he be sick, to give him adjournment of a year and a day.

XVII. A *ne admittas*, for either partie in a *Quare impedit*, or Assize of Darrein presentment, to the Ordinary, not to admit the others Clerk, till the matter be discussed.

XVIII. This writ must be sued within six moneths: otherwise the Ordinary may present by lapse.

XIX. A *Quare incumbravit*, for him that sueth a *Ne admittas* and afterwards recovereth in a *Quare impedit* against the Ordinary for incumbring the Church, contrary to the *Ne admittas*.

CHAP

CHAP. 46.

The Judgment.

I. THus far of suit: Judgment is the Courts final determination of the suit.

II. Upon judgment against the King in a petition, he is presently out of possession.

III. In a writ of right, the judgment after issue joyned is final on either side.

IV. *Against the King, judgment is not final, but is alwayes with a* Salvo jure Regis.

V Recovery in a writ of right bindes all strangers, not claiming within a year.

VI. Tenant for life suffering a wrongful recovery, it shall not prejudice his right, that hath the Inheritance, though he be prayed in aid, and make default.

VII. For after the death of tenant for life, he may falsifie it by action, of *ad terminum qui preteriit*, or writ of right, which is called *falsifying* of a recovery.

VIII. In a writ of Dower seme Guardian in soccage against Guardian by Knight service, she shal at his prayer be adjudged to endow her self wholy of the land in soccage, and this is called Dower *de la plus beale*.

IX. A debt acknowledged in a Court of Record either to the King, or a common person, is in the nature of a judgment, and called a *Recognizance*.

X. In appeals of mayhem, and in Indictments or appeals of felony, the accessory shall not be compelled to answer, till attainder of all the principals.

XI. He that is, or (by possibility) may be within Orders, namely, a Deacon at the least, may have the benefit of his Clergy, if he be found culpable of any barefelonie, where life and member is to be lost.

XII. This possibility (there being no other impediment) shall be tried by the judges by his ableneſse to read a verse.

Clergy

XIII, Clergy is the delivering of him to the Ordinary to be kept in prison.

XIV. If it be before judgment (in which case he is called a *Clerk convict*) he shall be tried there by a jury of Clerks, and therefore purging himself shall goe at large.

XV. Not purging himself, but being found culpable by those Clerks, he shall be only degraded.

XVI. But upon an appeal, no purgation shall be allowed.

XVII A Clerk convict shall answer to any offence committed before.

XVIII. *A Clerk convict forfeiteth his chattells.*

XIX. *Notice must be given to the King of the time, before the party make purgation.*

XX. If the Clergy be after judgment (in which case he is called a *Clerk-attaint*) he shall remain in perpetuall prison.

XXI Outlawry is a judgment in it self.

XXII. So is abjuration.

XXIII. The offender upon a presentment in a Leet, or Sheriffs turn shall be amerced.

XXIV. The Defendant in an appeal of felony, being acquitted, shall have judgment also to recover damages against the Plaintiff.

XXV. The Plaintiff recovering in a suit shall be allowed his costs.

XXVI. These judgments have their judiciall Writs belonging to them, both meer judiciall writs for the execution of them, and new originalls in the nature of judiciall writs, to undo some matters concerning judgments.

XXVII. Meer judiciall Writs in reall, or personall actions, are either such as lie only within the year and day after the judgment rendred, or a *Scire facias*.

Those

XXVIII. Those of the first sort are between the partie to the recovery, and in the same Court where the recovery was.

XXIX. Of this kind are upon recovery in reall and mixt actions.

XXX. *Habere facias seisinam*, to put him in possession upon a freehold recovered, in an Assize, *Precipe quod reddat*, &c.

XXXI. A writ to the Bishop to admit ones Clerk upon a presentation recovered in a *Quare impedit*, or Assize of *Darrein presentment*.

XXXII. Those upon a recovery in personal actions are of two sorts, *viz.* to have execution of his possessions, or against his body.

XXXIII. Execution of his possessions, is either of his lands, or chattels, or both.

XXXIV. That of the land, is either of the land it self, or of profits out of the land.

XXXV. Execution of the land it self is an *Habere facias possessionem*, upon a term of years recovered in an *Ejectione firmæ* &c.

XXXVI. Executions of his chattels is a *Fieri facias*, to levie execution of his goods and chattels onely.

XXXVII. Execution of his lands and chattels, is a *Levari facias*, to levie execution of the profits of his lands and chattels.

XXXVIII. Here, execution shall be of any land, which the party had the day of the judgment rendred, but for chattels (though it be a lease for years) onely those, which he had the day of the execution sued.

XXXIX. But in Court Barons execution is onely by distresse, and impounding till the party be satisfied

XL. The King may have a *distringas* to levie an amerciament, or such like by distresse and sale, whether it

it be an amerciament in the Leet, or Sheriffs turn, or otherwise.

XLI. Execution against the body is a *Capias ad satisfaciendum*, to take the body in execution for satisfying of the partie.

XLII. This is onely (in a personal action) where a *Capias* lay.

XLIII. Here an *Exigent* shall be awarded upon the first *Capias*.

XLIV *Of this nature are two speciall writs by the Kings Prerogatory*, Capias pro fine Regis, *and* Capias utlagatum.

XLV. *Capias pro fine*, when the partie is adjudged to pay a fine to the King.

XLVI. *Capias utlagatum*, to take one that is outlawed

XLVII. These are the judicial writs within the year and day.

XLVIII. A *Scire facias*, is to warn the defendant upon recovery in real actions, to shew cause why the plaintiffe should not have execution.

XLIX. Here, upon a *Nihil* returned, execution shall be presently against the parties to the Judgement.

L In case of life, the Judge may command execution to be done without any writ.

LI. A woman quick with child shall for once (and no more) be respited execution.

LII. Here, the trial shall be by a Jury of women, and the writ for it is called, A writ *De Ventre inspiciendo*.

CHAP

CHAP. 47.

A Writ of Errour, False Judgment, Attaint, Audita Querela.

I. THe new originals in the nature of judicial writs to undo ſome matters concerning Judgements are either writs grounded upon Errour, or an Attaint, and *Audita querela.*

II. Writs grounded upon Errour, are a writ of Errour and falſe Judgment.

III. Both theſe lie upon any errour in the proceeding.

IV. But errour in proceſſe may the ſame term be reformed in the ſame Court.

V. The proceſſe here is a *Scire facias.*

VI. The party bringing a writ to reverſe errour in the Judgment, may have a *ſuper-ſedeas* to ſtay execution, till the errour be diſcuſſed.

VII. A Writ of Errour is upon an errour in a Court of Record.

VIII. This may be ſued in the Kings Bench, or Parliament.

IX. In the Kings Bench, when the errour is in the Common place, or other inferior Court of Record.

X. In the parliament, when the errour is in the Kings Bench, and this is returnable before the King and the Lords onely.

XI. A writ of falſe Judgement is upon errour in a baſe Court.

XII. An Attaint, is to enquire, whether a Jurie of twelve men gave a falſe verdict.

XIII. This muſt be brought in the life of him for whom it paſſeth, and of ſome of them that gave it.

It

XIV. It lieth onely in perſonal actions other then treſpaſſes.

XV. The Jury here, (called the *Grand-Jury*) are twenty four, who are to be warned the firſt day.

XVI. The proceſſe againſt the party is ſummons, re-ſummons, as in Mortdanceſtor, &c.

XVII. The proceſſe againſt the petty Jury is *Venire facias*, and diſtreſſe.

XVIII. The petty jury muſt be all preſent, when the Grand jury is taken, and may plead in bar of the attaint, but not in abatement of the writ.

XIX. The Plaintiffe in the Attaint can give no more Evidence then was given at the firſt; but the defendant in affirmance of the firſt verdict, may.

XX *Audita querela*, is for one being, or to be in execution, to relieve him upon good matter of diſcharge, which he hath no means to plead.

XXI. The proceſſe where the *Audita querela* is ſued before execution, is a *venire facias* and diſtreſſe, and upon default after appearance and plea pleaded, a *diſtringas ad audiendum judicium*; for thereby judgment is to be given againſt him.

XXII In caſe of an *Audita querela* ſued before execution, he may have a *ſuperſedeas* upon good matter of diſcharge ſurmiſed in the writ of *Audita querela*, to ſtay for once the execution upon ſureties.

XXIII. After execution the proceſſe is onely a *Scire facias*; for if the proceſſe ſhould be by diſtreſſe infinite peradventure the partie ſhould looſe iſſues to keep the others body in perpetual priſon.

FINIS.

STATUTES.

CHAP. I.

Rule 1 IN the second Volume of old Statutes is a long Act made *Anno* 12 E. 1 entituled *Statutum Walliæ*, whereby it appeareth, that *Wales* was then incorporated into *England*, there are also many good Lawes concerning the division of *Wales* into Counties, also for trials of Actions, together with divers formes of Writs, and the proceeding thereupon, much like the Lawes of *England*, &c.

Stat. 27. *H.* 8. 26. Incorporateth *Wales* into *England*, and the other Statutes, that concern it, are 28. *H.* 3. 2. 9. *H.* 4. 4. 2. *H.* 5. *Stat.* 2 5. 26 *H.* 8 4. 26 *H* 8. 6 27 *H.* 8. 7. 32. *H.* 8. 12. 34. 35 *H.* 8 26. 18 *El.* 8. 27. *El* 9.

Rule 35. *Stat.* 37. *H.* 8. 21. By assent of Ordinary, Incumbent and Patron under their seales, an union may be made of two Churches, being not above six pounds yearly value in the Kings Books, nor distant one from another above a mile; saving to the King his tenths and first fruits.

Incorporate Towns, it must be by assent of the Corporation.

If such a poor Parish will within a year assure by writ-

ting to the incumbent and his successors, 8 *l.* yearly the union shall be void.

Rule 36. *&c. Magna Charta*, 36. 9 *H.* 3. If any shall give lands to a religious house, the grant shall be void, and the land forfeit to the Lord of the fee.

Stat. of Gloucester, or de religiosis, 7 *E.* 1. If lands be allened in Mortmain, the immediate Lord hath a year to enter, the next Lord halt a yeare, and so from Lord to Lord, till it come to the King.

Westm. 2. 32. 13. *E.* 1. Ecclesiasticall persons being debarred by the former statutes to obtain lands in Mortmain by alienation, endevoured fraudulently to obtain them by default in a suit: And therefore in such case it was ordained by this statute, that it should be enquired by the country, whether or no the Demandant had just title; and if so, then he should recover seisin; but if otherwise, the Lord of the fee should enter as before.

West. 2. 41. The King (founder of a religious house) may seize Lands, which he gave them, if they alien.

Ordinatio de perquirendis libertatibus. 27. *E.* 1. Before licences are obtained to Amortize lands, the writ *Ad quod damnum*, shall issue out of the Chancery to inquire concerning the same, *&c.*

The statute of Amortizing of Lands, 34. *E.* 1. Lands shal not be aliened in Mortmain, where there be mean lords without their consents declared under their seals; neither shal anything pass, where the donor reserveth nothing to himself, or where the inquisition is made, and returned without warrant, *viz.* without the writ Originall returned with the inquisition, *&c.*

The statute of writs for making inquisitions of Lands to be put in Mortmain, Incerti temporis, Writs of *Ad quod damnum*, for amortizing lands shall not be granted, but upon petition in full Parliament.

Statutum de Clero, 3. 18 *E.* 3, If Prelates, Clerks beneficed

neficed, or other people of religion, being impeached for purchasing lands in mortmaine, shew the Kings charter of license, & process thereupon made by an Inquest of *Ad quod dammin*, or of the Kings grace or by fine, they shall be in peace: And albeit they cannot sufficiently shew that they have entred by due process licence to them granted, yet they shall be well received to make a convenient fine for the same.

Stat. 15. *R.* 2. 5. Lands converted to a Church yard, or purchased to the use of any spirituall person Guilds, or Fraternities, or by a corporation shall be within the Statute of *Glocester*, 7. *E.* 1.

CHAP. 2.

Rule 3 *Præcog Reg.* 9. 17. *E.* 3. The King shal have the custody of the lands of naturall fools, taking the profits thereof without waste and finding them necessaries and after, their death, shall render them to the right heir.

Præc. Reg. 10. The King shall provide that the lands of lunaticks be safely kept without waste, and that they and their families (if they have any) shall be maintained with the profits thereof, and that the residue be kept for their use: and delivered unto them when they become to be of right mind: so as their lands shall not be alienes, neither shall the king have any profit thereof to his own use: But if they dye in such estate, the residue shall be distributed for their souls by the advice of the Ordinary.

Rule 4. *Stat.* 1. *R.* 3. 1. All grants, conveyances recoveryes and other assurances, made by *Cestis que use*, (being of full age, *Compos mentis*, and at large) shall be good against him and all others claiming as his heir or heirs, or to his use, saving the right of all others.

Stat. 4. *H.* 7. 17. The heir of *Cestis que use* (of

Knight-service land) shall be in ward and pay relief.

Stat. 19. *H.*7.15. execution upon judgment, statute or recognizance shall be good against *Cesty que use.*

The heir of *Cesty que use* shall pay relief, heriot, &c.

Cesty que use being a Bond man, the Land shall be seised by the Lord.

*Stat.*27.*H* 8.10. Where any be seised to the use or trust of another, *Cesty que use*, or trust shall have the possession in such qualitie, manner, and condition, as he had the use or trust: so when any be seised to the use or intent that another shall have a yearly rent of the same land, *Cesty que use* of the rent shall be deemed in the possession thereof, of like estate as he had that use.

Stat. 27.*H* 8.16. Bargaines and sales to raise an use of Inheritance or freehold must be by deed indented and inrolled within six moneths, in a court of record at *Wstm.* or in the County where the land lieth.

Rule 9 *Stat.*50.*E.*3.6. Fraudulent Assurances of lands or goods to deceive Creditors shall be void, and the creditors shall have execution thereof, as if no such gift had been made.

*Stat.*3 *H.*7 4. All deeds of gift of goods and chattels, made of trust to ones own use, shall be void.

Stat 13 *El* 5 Every gift, grant, bargain and conveiance of lands, or chattles, or of a lease rent, common, or other profits out of them, and every bond, suit, judgment and execution had or made for the defrauding of any persons just action, suit, debt, account, damage, penaltie, forfeiture, heriot, mortuarie, or releif, shall be void against that person, his heires executors, &c.

The parties, or privies (knowing such a fraudulent gift) which shall justifie it to be done *bona fide*, o shall alien such things so to them conveyed, forfeit one years value of the lands or profits out of it, and the whole value of the goods and chattles, and the sum of such covenous

covenous bond, and shall have half a years imprisonment.

This Act extends not to common recoveries, nor vouchers in a *Formedon*, nor to any gift, &c. *bona fide* and upon good consideration to any person, not knowing of the fraud.

Stat. 27 El. 4. Every conveyance, grant, charge, lease, estate, incumbrance, or limitation of use of lands, tenements, or hereditaments made for the defrauding of purchasers of the land it self, or any part, or profit out of it, shall be void against the person so purchasing for money, or other good consideration, and against all claiming under him, with penalty, as in the former Statute.

This extendeth not to the avoiding of any grant, *&c.* upon good consideration and *bona fide*

If any such conveyance, *&c* be made with a clause of revocation or alteration at his pleasure by writing, and after he shall bargain, demise, sell, grant, convey, or charge the same lands, *&c.* for money, or other good consideration (the conveyance not revoked nor altered) then such conveyance, *&c* shall be voyd against the bargainees, *&c.* and all claiming under them, lawfull mortgages only excepted.

Rule 11. *Præcog Reg.* 15 17. E. 2. The Kings gift or grant of land, or a Mannor *cum pertinentiis*, conveyeth, not Knights fees, advowsons, or dowers, without expresse words.

Stat. 1 *H* 4 6. In a petition to the King for lands, annuities, offices, &c. their value shall be therein expresst; otherwise, the letters Patents thereupon shall be void.

Stat. 18. *H.* 6 1. All Letters Patents, which bear not date the day of the delivery of the Kings warrant into the Chancery, shall be void.

Stat. 34. 35. *H* 8. 21, A confirmation of all estates ob-

cained by, or conveyed from the King within seven years after the fourth of *February*, in the 27 year of his raign, notwithstanding any misi-recitall, non-recitall, *&c.* with divers provisoes, *&c.* therein contained.

Stat. 1. *E.* 6. 8. Such another Statute for the confirmation of all grants, made, and to be made by E. 6. from the 28 of *January* in the first year of his raign, and so during his life, with such provisoes, *&c.* as in the sayd Act of *H.* 8.

Stat. 4,5 *P.M.* 1. Another like Statute for the confirmation of grants made and to be made, to or by the Queen, or the King and Queen, from the first of *July* in the first year of her Reign, and so during her life, with provisoes, as in the former Acts.

Stat. 18. *El.* 2. Another like confirmation of all grants made to, for, or by the Queen, or to be made within seven years next after the end of this Session, with like provisoes, *&c.*

Stat. 43. *El.* 1. Another confirmation of grants made by Qu. El. from the eight of *February* in the 25 yeare of her raign, untill the end of this Session and a year after.

Stat. 21. *Jac.* 25. The King, *&c.* shall not take advantage of Forfeitures against his Patentees, before Commission Processe, *&c.*

Stat. 21. *Jac.* 29. A confirmation of Leases of the Duchy lands in *Cornwall.*

Stat. 1. *Car.* 2. Such another for Leases thereof, to be made within three years.

CHAP. 3.

Rule 6. *Stat.* 32. *H.* 8. 34. Grants of Reversions may enter upon Farmers for any Forfeiture (or condition) and have like advantages against them (by action only, for any other Covenants, condition, or agree-

agreement contained in the Indenture of their leaſe) as the Leſſors, their heirs, or ſucceſſors might: And the like for the Leſſees againſt the grantees of reverſions, Recovery in value only excepted.

CHAP. 4.

Rule 9. *Stat. 6. H. 8* 15. If any make ſuit to the King for lands, offices, or other things, formerly granted to any perſon during the Kings pleaſure (the firſt Patentee being ſtill in life) the laſt grantee ſhall expreſſe in his Petition or pattent the former pattent, and the determination of the Kings pleaſure concerning the ſame, otherwiſe the laſt grant ſhall be voyd.

Rule 15. *Gloceſter 7. 6. E. 1.* If a woman alien her dower in fee or for life, the heir or other perſon, to whom the Land ought to revert, ſhall recover againſt the Alienee in her life time.

CHAP. 5.

Rule 5. *Merton, 9. 20. H. 3.* A child borne before Marriage is a baſtard, albeit the common order of the Church be otherwiſe.

Stat. 9. H. 6 11. No writ ſhall be awarded to the ordinary to certifie Baſtardy, before three Proclamations be made in Chancery in three moneths, viz. once every moneth, that all perſons, who have any thing to object againſt the party for baſtardy, ſhall ſue to the Ordinary for that purpoſe.

Rule 8. *Merton, 5. 10. H. 3.* Uſury ſhall not run againſt any within age from the time of the death of his Anceſtor, (whoſe heir he is) unto his lawfull age; yet the principall with uſury due before the Anceſtors death ſhall be paid, notwithſtanding this Act.

Rule

Rule 10. *Stat.* 32. *H.* 8, 33. The dying seised of a disseisor with force, and without title, taketh not away the entry of him and his heirs, who at the time of such discent had good title of Entry, unlesse the disseisor had peaceable possession by five years next after such disseisin.

Rule 14 *westm.* 2. 1. 13 *E.* 1. The will of the giver (according to the form in the deed of gift manifestly expressed) shall be from henceforth observed: so that they to whom the land was given under such condition (*viz. that if the donee or donees should die without issue, that then the land should revert to the donor*) should have no power to alien the land so given, but that it shall remaine to their issue after their death, or shall revert to the giver or his heirs, if issue fail; neither shall the second husband of any such woman, *being donee in tail*) from henceforth have any thing of the land so given upon condition, after the death of his wife, by the Law of England; neither shall the issue of such husband and wife succeed in the inheritance; but immediatly after the death of the husband and wife, to whom the land was given, it shall returne to their issue, or to the giver, or his heirs, as aforesaid.

A Fine levied of such lands shall be void in Law; and the heir or reversioner (albeit they be for full age, in England, and out of prison) need not make their claim: Howbeit, this clause concerning a fine is altered by 32. *H* 8. 39. which see *infra*.

Stat. 34. & 35. *H.* 8 20. No common recovery of lands in tail, of the gift or other provision of the King or his progenitors (though it be with voucher against tenant in tail, the remainder or reversion being in the King at the time of the recovery) shall bind the heir in tail, or bar him of his entry: Tenant in tail shall take no advantage for any recompence in value against the vouchee or his heirs.

Rule

Rule 24 *Mag. Cart.* 7.9. *H.* 3. The wife, after the death of her husband, shall abide in his chief messuage forty dayes, within which time her dower shall be assigned her: If the chief messuage be a Castle, then she shall have a competent house provided her, til her dower be assigned.

Westm. 2. 34.13. *E.* 1. A woman that leaveth her husband and abideth with an adulterer, shall not have Dower; unless the husband (voluntarily and without coertion of the Church) reconcile her and suffer her to dwell with him.

Stat. 11. *H.* 7.20. If a woman that hath an estate in Dower for life, or in tail joyntly with her husband, or only to her self, or to her use in any lands, &c. of the inheritance or purchase of her husband, or given to the husband and wife by the husbands ancestors, or any seised to the use of the husband, or his ancestors, do sole (or which an after taken husband) discontinue or suffer a recovery by Covin, it shall be voyd, and he to whom the land ought to belong after the death of the said woman, may enter (as if the woman were dead) without discontinuance or recovery: Howbeit, the woman may enter after the Husbands death, but if the woman were sole, the recovery or discontinuance barreth her for ever.

This Act extends not to any recovery or discontinuance with the heir next inheritable to the woman, or by his consent of Record enrolled.

Stat. 27. *H.* 8 10. Where an estate is made in possession or use to Husband and wife and his heirs, or the heirs of their bodies, or of one of their bodies, or to them for their lives, or for the wives life for her Jointure; In any of these cases she shall not have Dower: Howbeit upon a lawfull eviction of that Jointure she shall be endowed according to the rate of her husbands land, whereof she was dowable.

Such

Such a Joynture being made after marriage, the wife (after the husbands death) may refuse it, and betake her to her Dower, unlesse such Joyntute be made by Act of Parliament.

CHAP. 7.

Rule 7. *Stat. de districtione Scaccarii*, 51. *H.* 3: The owner of impounded cattel may give them food without disturbance.

A distresse taken for the Kings debt shall not be sold within 15 dayes, and upon shewing of a Tally, and giving security for his appearance in the Exchequer upon the next accompt, the distresse shall cease: The Sheriff shall also attach the party that received the debt, to be there likewise at the same time.

Neither draught cattel, nor sheep shall be distrained (except for *Damage-feasant*) so long as other goods may be found to satisfye the debt: Distresses shall be reasonable: The Sheriffe shall answer all debts received, and where the Sherif chargeth himself, the debt shall be quitted.

Marlebr. 15. 52. *H.* 3. It shall not be lawfull for any (except the King and his officers, having special authority) to take distresses out of his fee, or in the Kings high way, or in the common street.

Marlebr. 4. None shall drive a distresse out of the County, wherein it is taken, in pain to be fined, and to make recompence to the party grieved: none shall take an unreasonable distress, in pain of amerciament.

Westm. 1. 16 3. E. 1. None shall drive a distress out of the County, or distrain wrongfully upon the penalties provided by the Statute of *Marlebr.*

westm 2. 36. 13. E. 1. None shall procure any to distrain another to make him appear at the county court or any other inferiour court, on purpose to vex him,

and

and put him to charge and trouble, in pain to make fine to the King, and to pay the party grieved treble damages.

weſtm. 2. 37. 13. E. 1. No diſtreſſe ſhall be taken but by Bailifts known and ſworn, in pain to reſtore damages to the party grieved, and to be grievouſly puniſhed by the King.

Artic. Cler. 9. 9. E. 2. Diſtreſſes ſhall not be taken in the High-way, nor in the ancient fees of the Church.

Stat. 1, 2. *P. M.* 12. No diſtreſſe of Cattell ſhall be driven out of the hundred, rape, wapentake, or lath, where it is taken, except to a pound *Overt* within the ſame Shire, not above three miles diſtant from the place, where it is ſo taken: Neither ſhall a diſtreſſe be impounded in ſeveral places, whereby the owner may be conſtrained to ſue ſeveral *Replevins* for the delivery thereof in pain to forfeit to the party grieved for every offence committed againſt the Act 5 l. and treble damages.

None ſhall take above 4 *d.* for the poundage of one whole diſtreſſe (and where leſſe is uſually taken, to take leſſe) in paine to forfeit it to the party grieved 5 l. and ſo much money, as is taken above 4 *d.*

Rule 24 *Quia emptores terrarum*, 18. E. 1. In all Feoffments to one and his heirs, the Feoffee ſhall hold his land, of the chief Lord of the fee by the ſame ſervices that the Feoffer held before.

Here, if the Feoffment be made of parcel, he ſhall hold of the chief Lord *pro particula*, according to the quantity of the land, and the Feoffor ſhall be ſet free for that part.

Rule 27. *Mag. Cart.* 31. 9. *H.* 3. If a Baronie, *&c.* Eſcheat to the King, the tenants that hold of the ſame (not having other lands that hold of the King in cheif) ſhall pay like relief, and do like ſervices to the King after ſuch Eſcheat, as they payd or did to their former Lords, and not otherwiſe.

Stat.

Stat. 1. E. 6. So also it is, when a Seigniorie cometh to the King by attainder, convictions outlawry, dissolution or surrender.

Stat 1. E. 3. *Stat.* 2. *Cap* 12. Lands holden of the King in chief, and aliened without licence shall not be forfeited, but a reasonable fine shall be taken (of such lands so alienedy) by due processe in Chancery. And *cap.* 13 lands holden of the King, as of some Honor shal not be taken into the Kings hands, as if they were holden of the King in chief, as of his Crown.

Rule 31. *Stat.* 33. *H* 8 22. A fee set down for respiting of Homage in the Exchequer or other Courts.

Rule 35. *Marlebr.* 9 52. *H.* 3. None enfeoffed by deed shall be distrained to do suit to his Lords Court, unlesse he be bound to do it by the form of his deed, or he or his ancestors have used to do it, before the Kings first voyage in *Brittain, being about 39 years and an halfe before the making of this Statute.*

The eldest Coparcener shall only do suit of Court, and the other parceners shall be contributary: Also one Jointenant or tenant in Common shall do the suit and the rest shall contribute.

Rule 38. *Westm.* 35. Reasonable aid shall be 20 *s.* for a whole Knights fee, and as much for 20 *l.* land in soccage; and so more or lesse, according to that rate.

It shall be levied at 15 years age of the son, and 7: years of the daughter; and if the Father levy it, and dye before the marriage of the daughter, the fathers executors shall be charged therewith, and if they have not assets, the heir shall be therewith charged.

Stat. 25 E. 3. *Stat.* 5 11. Reasonable aid to make the Kings eldest son a Knight, and to marry his eldest daughter shall be levied of all lands holden of the King (without Mean) according to the rate in the former Statute.

Rule 43. *Marlbr.* 17. 52. *H.* 3. Guardian in soccage shall

shall make no waste, sale, or destruction of the heirs inheritance, but safely keep the same to the use of the heir, and when he comes to age shall answer the issues thereof by a lawful account, having his reasonable cess: neither shall such Guardian sell the marriage of such heir, but to his advantage.

Rule 48. *Magn. Cart* 3 9. *H.* 3. The Lord shall take homage of the heir before he have the Wardship; and such heir, after he hath been in Ward, shall (at his full age of 21 years) have his inheritance without relief or fine; and if the heir within age be made a Knight, yet his land shall remain in ward, untill his full age aforesaid.

Marlery 6. 52. *H* 3. If one enfeoffe his heir within age to cause the Lord to lose his Wardship, and die yet the Lord shall have the Wardship.

So when a fraudulent feoffment is made by a tenant upon condition to revert (after certain years) to him and his heirs, if the feoffees pay not a certain sum to the value, or more then the value of the lands; In such case the Lord shall have a writ *de Cuſtodia redeundæ*: And if (being able to aver this matter) he recover, yet the feoffees shall have the land again when the heir comes to age; Howbeit, the Lord not being able to aver it, shall render the feoffees their costs and damages.

Stat. 32. *H.* 1. Two Jointenants or more holding of the King, and he that hath the fee dyeth, the King shall presently have the wardship and marriage of the body of his heir, if he be within age. Saving to every woman her dower of two parts of those lands, divided from the third part (as in that Statute is directed) and saving to the King during the wards minority, the reversion of such Jointenants, and tenants in dower.

Rule 50. *Merton*, 6. 20. *H.* 3 If any heir (14 years old, or above) marrie himself without licence of his

Lord

Lord to defraud him of the marriage, and the Lord offer him a convenient marraige without disparagement, the Lord shall retain the land beyond the term of his full age, untill he may receive the double value of the marriage.

If a Lord marrie the heir within 14 yeares of age, whereby he is disparaged, he shall lose the Wardship, and the profits of the lands shall (by the Wards friends) be converted to the Wards use.

Merton 20. *H.* 3. If an heir will not marry at the request of the Lord, he shall pay to the lord as much as his marraige is worth; for (of right) the marraige of an heir within age pertaineth to the Lord.

West. 1. 22. 3. *E.* 1. The Lord may hold the land of heirs female two yeares after their age of 14 within which two years if he marrie them not, they shall go quit without giving any thing for the wardship or marriage, and if they will not except a convenient marriage tendred by the Lord, he shall hold the land till their age of 21 yeares, and over, until he have taken the value of the marriage.

Stat 4. 5. *P. M.* 8. None shall take or convey, or cause to be taken or conveyed awsy any maid or woman child unmarried, being within the age of 16 yeares, out of the custodie and against the will of the father or mother of such childe, or of the person, to whom the father of such child (by his last will, or other act in his life time) hath appointed the governance of such child (except such taking shall be (without fraud) by or for the Master or Mistris of such childe, or her Guardian in Soccage or Chivalrie (in pain of two years imprisonment with out Bail, or else to pay such fine, as shall be assessed by the Council in the Star-chamber.

None shall take away or deflower any such childe, or against the will of her father, if he be living, or of her mother (having the custody of her) if the Father be dead

dead, contract matrimony with any such Child, (except by the title of Wardship) in pain of five years imprisonment, or to pay a fine to be assessed by the sayd Councill. The Fines are to be divided betwixt their Majesties and the prosecuter.

The said Council and Justices of Assize have power to hear and determine these offences.

If any such child (above the age of 12. and under the age of 14) consent to any such contract of matrimony, the next of the kin to whom her inheritance should come, shall enjoy it during her life? but after her decease, it shall revert to the right inheritor, other then to him, that did so contract matrimony. This act shall not prejudice any custome in *London*, or any other Citty or town concerning Orphans.

CHAP.

Rule 6. *Merton* 4 20. *H.* 3. Lords of wastes, or commonable woods or pastures may approve against their Tenants part thereof, so as they leave sufficient Common besides together with free ingresse and regresse to enjoy the same.

West. 2 46 13 *E.* 1. Such a Lord may approve in like sort against his neighbours which have common appurtenance, and for a Windmil, Sheepcote, Dairy, enlarging of a Court or Courtilage none shall be grieved by Assize of novel disseisin.

If a ditch or hedge made for that purpose be thrown down, and the parties offending be not discovered by the Townes adjacent, they shall make it up again, and render damages.

Stat. 3. *E.* 6. 3. Upon Iudgment for the Plaintiff in an Assize upon any branch of the said Statutes of *Merton* and *Westm.* 2. the Court shall award treble damages

This

This Statute shall not extend to houses built before the making thereof, not having above three acres laid to them, nor to a Garden, Orchard, or Pond, not exceeding two acres.

Stat. 43. El. 11. All contracts made betwixt Lords and Commoners of wasts, *&c.* subject to surrounding shall be good, save where the Queen, *&c.* hath an Interest. This Act shall not be prejudicial to Lords and Commoners in any part of wasts, not assigned to Drainers, *&c.* nor to any Port or Haven.

CHAP. 9.

Rule 3 *Stat.* 19 *H.* 7. 15. Upon a feoffment made to the use of a Villein, the Lord may enter into the land it self.

Rule 7. *Stat* 9 *R* 2 2. In a suit by a Villein against his Lord, the Lord shall not be barred of their Villeins, because of their answer in Law.

Rule 11. E. 61. 6. 16 No office or deputation thereof, or of any part thereof, which concerneth the administration or execution of Justice, or the receit, controlement, or payment of the Kings money, or revenue, or any accompt, Aulnage, Auditorship, or Surveying of the Kings Lands, or Customes, or Administration, or Attendance in any Custome-house, or keeping of any of the Kings Towns, Castles, or Fortress (being places of strength or defence) or any Clerkship in a Court of Record, shall be bargained or sold, or any reward, or agreement of Reward taken for it, upon pain that the seller, *&c* shall forfeit all his Interest in such office or deputation, *&c.* and the buyer be a disabled person to enjoy the same. And all bonds, *&c.* to be void, as against him, by whom they are made. Howbeit, all Acts executed by any such person offending before he be removed from his Office, *&c.* shall remain good. This

This ſtatute extendeth not to any Office of Inheritance, or to any parkerſhip, or to any offices to be given by the Chief Juſtices of the Kings Bench or Common place, or by any Iuſtices of Aſſize.

CHAP. 10

Rule 2. *Stat.* 27. *H.* 8 24. No ſubject ſhall have authority to pardon any felony, or any acceſſories to felony, or any outlawry for ſuch offences. Nor to make any juſtices of Eyre, Aſſize, Peace, or Gaole-delivery: All originall Writs, Indictments of treaſon, felonie, tre paſſe, and proceſſe upon the ſame ſhall be only in the Kings name, and the *Teſte* in his name, that hath the Franchiſe.

Every Writ and Indictment, whereby any thing is ſuppoſed to be done againſt the peace, ſhall be ſuppoſed to be done againſt the Kings peace onely, and not againſt the peace of any ſubject. the King ſhall have all fines, iſſues, amerciaments, and forfeitures loſt by any Officers of Franchiſes for non-execution, or inſufficient returnes of proceſſe, or for any miſdemeanour concerning their office, with many proviſoes in the ſame Statute.

CHAP. 11.

Rule 4 W. *Eſtm.* 2, 23. 13. *E.* 1. Executors ſhall have a Writ of accompt, and the action and proceſſe in the ſame writ, as their teſtator ſhould, if he had lived.

Stat. 4 E. 3. 7. 1 Executors ſhal have an action for a treſpaſs done to their teſtator, as of his goods and chattels carried away in his life, and recover their damages in like-manner, as he, whoſe executors they are, might have done: if he had lived.

Stat. 32. *H.* 8. 1. He that hath lands, tenements, or hereditaments in ſoccage, and none holden by knight-ſervice, or ſoccage in chief, may deviſe all by his will in writing, or give all by act executed in his life; ſo may he that hath land holden by ſoccage in cheif, and other land holden of a common perſon by ſoccage, and none holden by Knight-ſervice: ſaving to the King *primer ſeiſin*, relief, ſuing of the ſame out of the Kings hands, fines for alienation, &c. and all other duties for the ſoccage in chief, as before hath been accuſtomed.

He that hath lands, &c. holden by Knight ſervice (whether he have any other lands holden of the King or of any other perſon by Knight-ſervice, or otherwiſe, or not) may do the like for two parts in three to be divided in certainty, for the advancement of his wife or children, and payment of his debts: ſaving unto the King the wardſhip or *primer ſeiſin* of the third part (without any charge, dower, &c.) and finds for alienation.

He that hath lands, &c. holden by knight-ſervice (whether of the king alone by knight-ſervice, not in cheif, or of a common perſon, or ſom holden of the king, ſome of a common perſon) and other land in ſoccage, may deviſe by will, or give by act executed in his life, two parts of that holden by knight-ſervice, and all the ſoccage: ſaving to the Lord of the land holden by knight-ſervice the Wardſhip of a full third part thereof, without any charge, dower, &c.

Provided, that every one ſhall ſue his liverie, and pay his relief and heriot, as if this Act had never been made.

Stat. 34. 35. *H.* 8 The former Statute ſhall be extended to enable deviſes, and other Acts onely of Land in Fee-ſimple.

And

And if the partie, that maketh the will or other Act be seized in Coparcenerie, or in the common; it shal be good for so much, as in himselfe of right is.

The wardship, relief, *primer seisin*, &c. shall be of lands, that descend immediatly after the death of him that maketh the will or other act, as well in fee-tail as fee-simple; And the devise of two parts residue shall be good, though it be of all his fee-simples land: Such a will shall be good for two parts, (in case only where two may be devised) though it be made for the whole or more then two parts.

Such wils made by a *feme-covert*, infant under the age of 21 yeares Ideot, or one of *non-sane* memorie shall not be good, See also some other things there for the explanation of the former Act of 32 *H.* 8. 1.

Rule 10. *Stat.* 21. *H* 8 4. that part of the executors, which take upon them the charge of a will, may sell the land devised by the Testator to be sold, albeit the other part which refuse, will not joyn with them.

Rule 11. *Stat* 25. *E* 3. *Stat* 5. 5. Executors of executors shall have actions of debt, accompt, and goods carried away of the first Testators, and Execution of Statute-Merchants recognizances made unto him; And shall also answer for Assets, as the first executors should have done.

Rule 12. *Westm.* 2. 19. 12. *E.* 1. the Ordinarie shall satisfie debts, wherein the Intestate was bound, as executors should,

Stat. 31. *E* 3 11. the Ordinaries shall depute next friends of the Intestate to administer his goods, who shall sue and be sued, and be accountable to the Ordinaries, as executors should.

Stat. 21 *H.* 8. 5. Administration shall be committed to the widdow of the Intestate, or to the next of his blood, or to both, at the discretion of the Ordinary. The O-

dinary not doing his duty herein forfeiteth ten pounds *Stat.* 43. El. 8. If any obtain goods of an Inteſtate by fraud (as by procuring adminiſtration to be granted to a ſtranger of mean eſtate, or not to be found) and not upon valuable conſideration, &c. he ſhall be charged as executor in his own wrong as far as the goods or debts extend.

Rule 20. *Weſtm.* 1. 43. E. 1. Where a man, dog, or cat, eſcape alive out of the Ship, it ſhall be no wreck; but the things ſhall be priſed by the Sheriff or Coroner and delivered to thoſe of the Town, where they be found, to anſwer for them: So as if any within a year and a day prove, that the goods are his, they ſhall be reſtored to him.

CHAP. 13.

Rule 3. *Stat.* 32. H. 8 28. Leaſes made by tenant in tail, or by him, who is ſeiſed in the right of his wife or Church (they being of full age at the time of ſuch a leaſe made) ſhal be good againſt the Leſſors, their wives, heirs, and ſucceſſors.

This Statute ſhal not extend to any leaſe to be made of lands in the hands of any Farmer by force of any old leaſe, unleſſe ſuch an old leaſe expired within a year after the making of the new; nor to any grant to be made of any reverſion of ſuch lands, nor to any leaſe of lands, which have been let to Farm 20 years before ſuch leaſe made; nor to any leaſe made without impeachment for waſte; nor for above 21 years, or three lives from the making thereof; and that upon every ſuch leaſe there be reſerved ſo much yearly rent, as hath bin uſually paid within 20 years before ſuch leaſe made: And the reverſioner of ſuch lands, &c. may (after the death of ſuch leſſor, or his heirs) have ſuch remedie againſt

against such lessee, his executors and assignes, as such lessor might have had against such lessee.

Provided, that all leases made by the husband of land, &c. (being the inheritance of the wife) shall be made by Indenture in the name of the husband and wife, and she to seal to the same, and the rent shall be reserved to the husband and wife, and the heires of the wife. And here, the husband shall not alien or discharge the rent, or any part thereof longer then during the coverture, unlesse it be by fine leived by husband and wife.

No fine, feoffment, or other act, done by the husband only, of the inheritance or free-hold of the wife shall make any discontinuance, or prejudice the wife or any other, who is to enjoy the estate after her decease, fines leived by the husband and wife onely excepted.

Stat. 1. El. *not printed.* All estates made by any Arch-Bishop, or Bishop of any mannors, Lands, &c. parcel of their Bishoprick, other then to the Queen, &c and other then for 21 years and three lives from the time of such estate made; and whereupon the accustomed yearly rent or more shall be reserved, shall be void.

Stat. 13. El 10. All leases, conveyances, and estates made by any master and Fellowes of a Colledge Dean and Chapter, Guardian of an hospital, Parson, Vicar, or other having any ecclesiastical living &c. other then for 21 years, or three lives from the making, and whereupon the accustomed yearly rent or more is reserved, shall be void.

Stat. 14. El. 11. The branch of the Statute of 13. El. 10. made to avoid certain Leases, shall not extend to houses scituate in Corporations, or Market-townes. or the Suburbs thereof, nor to the grounds of such houses, so as they be not the dwelling houses of the persons there restrained, nor have 10 acres of ground belonging

to them. Provided, that no leaſes in reverſion ſhal be made of ſuch houſes, nor without reſerving the accuſtomed yearly rent at leaſt nor without charging the leſſee with reparations, nor for a longer term then 40 years: Neither ſhall any ſuch houſes be alienéd without purchaſing preſently after other lands in Fee-ſimple of as good value.

Stat. 18. *El.* 11. All leaſes made by ſuch perſons, as are mentioned in 13. *El.* 10. where another leaſe is in being, not to be expired, ſurrendred, or ended within three yeares next after the making of ſuch new leaſe, ſhall be void: And all Bonds & Covenants for renewing of any ſuch leaſe contrary to this Act, or to the ſaid *Stat.* of 13 *El.* 10. ſhall alſo be void.

Rule 21. *weſtm.* 2. 5. 13. *E.* 1. Uſurpation of Churches during wardſhip, particular eſtates, Coverture, or Vacanci, ſhall not bar the heir at full age, the reverſioner or remainder in poſſeſſion, the feme-diſcovert, or the ſpiritual perſon in ſucceſſion, from having their writ of Advowſon poſſeſſory, *viz.* a *quare impedit*, or an Aſſize of Darrein preſentment, as their anceſtor, or predeceſſor might have had, uſurpation had happened in their time; whereas before this Act they were (in ſuch caſes) put to their writ of right of Advowſon.

One and the ſame form of pleading ſhall be uſed in *Darrein preſentment*, and *Quare impedit*, *viz.* if the defendant alledged plenartie of his own preſenation, the plea ſhall not ſtay by reaſon of the plenartie, ſo as the writ be purchaſed within the ſix moneths; albeit he cannot recover within that time.

Where partition is made upon record, or by fine to preſent by turn, the Coparcener, that is diſturbed ſhall not be put to a *Quare impedit*, but may have remedie upon the Roll or fine by *Scire facias*: And amongſt Coparceners, if one preſent twice together, yet ſhall not

not the other barred, but have his other turn when it falleth.

CHAP. 14.

Rule 4. *Westm.* 2. 34 13. *E.* 1. If a man ravished woman married, maid, or other, albeit she did consent after, he shall have judgment of life and member, and here the King shall have the suit.

Stat. 6. *R.* 2. 6. Both the ravisher and ravished (where she consents after the fact) are disabled to have or chalenge any inheritance, dower, or joint-estate after the death of their husband or ancestor.

In an appeal of Rape, the Husband, father, or next of the blood shall have the suit, and the Defendant shal not be received to wage Battail.

CHAP. 15.

Rule 2. *Westm.* 1. 33 3. *E.* 1. he that publisheth any false news or tales, whereby discord or occasion of discord & slander may grow betwen the King & his people, or the Nobles, shall be kept in prison, untill he hath brought him forth into the Court that did speak the same.

Stat. 12. *R.* 2. 11. The like for him that telleth false lies of nobles and great officers, whereby discord may arise between the Lords and Commons.

Stat. 12. *R.* 2. 11. in the case of these former Statutes if the party cannot bring forth him, that speak the same, he shall be punished by the aduise of the Council.

CHAP. 19

Rule 4. 31. *E.* 3. *Stat.* 1. 2. If any man or Town, char-

ged with the goods of fugitives or felons will (in discharge of himself) alledge another, that is chargeable therewith, he or they shall be heard, and right shall be done him.

Stat. 1. *R.* 3. 3 None shall seize the goods of any arrested for suspition of felonie before he be convict or attaint thereof, or the same goods be otherwise lawfully forfeited, in pain to forfeit to the party grieved double the value of the goods so taken to be recovered by action of debt, &c.

Rule 6. 1. E. 6. 12. The wife shall be endowed, albeit her husband were attainted, convicted, or outlawed for treason or felonie, saving the right of others. *But note, that this is altered for treason*, by 5. E. 6. 12.

Rule 13 *Magn. Cart.* 22. 9. H. 3. The King shall have the land by a year and a day, and then render it to the Lord of the fee,

Prærog. Reg. 16. 17. E 2. The King shall have the profits by a year and a day, and also the wasting of the tenements by pulling down houses, cutting down woods, digging up meadowes, &c.

Rule 18 *Stat.* 21. H. 8. 7. (made perpetual by 5, *El.* 10.) the servant that hath any goods or chattels delivered unto him to keep by his master, and (with an intent to steal) doth either go away therewith, or (being in service) imbezzles or converts the same to his own use, shall be judged a thief, if the value of the goods amount to 40s Howbeit, this extendeth not to apprentices or persons within eight years of age.

Rule 21. *Stat.* 21. H. 8. 11. where a felon robbeth or taketh the money or goods of any, and is thereof found guilty, or otherwise attainted upon evidence given by the party himselfe, or others by his procurment; in this case, the justices of *G D.* or other justices, before whom he is so found guilty or attainted, have power to award a writ

a writ of reſtitution for the mony or goods ſo robbed or taken, in like manner, as if the felon were attainted at the ſuit of the partie in an appeal.

Rule 23. *Stat. de Malefact. in parcis*, 21.E.1. It is no felony for Foreſters, &c. to kill miſdoers, &c. If they will not ſubmit themſelves.

Rule 25. *Glocester* 9.6.E.1. He that killeth a man by miſadventure, or *ſe defendendo* muſt put himſelfe upon the Country; and if he be found to have done it ſo, the King (if he pleaſe) may pardon him.

Marlbr. 25.52.H.3. To kill a man by miſadventure ſhall be no murder.

CHAP. 21.

Rule 3. *Stat. de proditionibus* 25.E.3 *Stat.* 5.5. It is high treaſon to kill the Chancellor, Treaſurer, &c. *as in the ſecond Rule of this Chapter.* Alſo to counterfeit currant money: To bring falſe money into this Realm counterfeit according to the money of *England* (knowing the ſame falſe) to merchandize or make payment with it. To counterfeit the great Seal or privy ſeal.

Stat. 1.*Mar. Seſſ.*1.6 Seal-manuel, privie ſignet, or privy ſeal, ſtrange coine currant in this Realm.

Stat. 1 2.*P.M.* 11. To bring wittingly falſe forein coine hether, to the intent to utter it within the Realm

Stat. 5 El.11. To clip, waſh, round, or file any money of this Realm, or currant here: Howbeit, this cauſeth forfeiture of land for life onely; but no leſſe of Dower or blood corrupted.

*Satt.*18.El.1. To impair, diminiſh falſifie, ſcale, or lighten any money by any art, wayes, or means whatſoever.

Stat. 1.El.1. & 6.*Stat.*13.El.1. Treaſon, to advance the Popes authority, &c.

Stat.

*Stat.*33.*H.*8.20. Attainder of high treason by the course of the common Law, or Statutes of this Realm, shall be of as great force, as an attainder by Parlament: And the King shall have the real possession of every thing forfeited without inquisition or office: saving to strangers, &c.

*Stat.*29.*El.*1. No record of attainder of treason shall be reversed, where the partie attainted is executed for the same offence.

*Stat.*20.*H.*10 and 5.6.*E.*6.11. Any offence (made treason hertofore) committed out of the limits of the Realm, shall be inquired here by commissions, and like proces used, as if it he had been don within the Realm: One Resiant out of the limits of the Realm may be outlawed for high Treason: An estate Tail shall be forfeit for high Treason.

CAAP. 22.

Rule 2.36.E.3.15. All pleas which be pleaded in any of the Kings Courts &c. or in the Courts of other Lords shall be pleaded, shewed, and defended, answered, debated, and judged in the english tongue and entred and enrolled in Latine.

Rule 7 14.E.2.6. No proceese shall be annulled, or discontinued by the Clerks mistaking in writing one silable or letter too little or too much, but shall be speedily amended without any advantage to the other.

*Stat.*9H 5.4. The justices before whom such pleas or records be made, or shall be depending, may make such amendment as well after judgment, as before so long as such record or proceese shall continue before them.

Stat 4.H 6.3. The Statute of 9.H.5.4. is made perpetuall: provided it shall not extend to records or proceesses

ceſſes in *Wales*, or whereby any perſon is outlawed.

Stat. 8. *H.* 6. 12. No judgment or record ſhall be reverſed or annulled for error aſſigned by reaſon of the raiſing or interlining of any record, proceſſe, warrant writ, pannel, or return, or any addition, ſubtraction, or diminution of words, letters, titles, or parcel of letters found in the ſame.

The Judges may reform all defects in any record, proceſſe, word, plea, warrant, writ, pannel, or return (except appeals, indictments of treaſon, or felonie, and the outlawries of the ſame, and the ſubſtance of the proper names, ſirnames, and addition, left out in original writs, exigents, and in other writs of Proclamation, contrary to the ſtatute of 1 *H.* 5. 5.) ſo as by ſuch miſpriſion of the Clerk no Judgment ſhall be reverſed or annulled. Variance alledged between a Record and the Certificat thereof ſhall be amended by the Judges.

Stat. 8 *H.* 6. 15. The Juſtices may amend the miſpriſions and defaults of Clerks of the Court, or of Sheriffes and their Clerkes, and of all other Officers whatſoever, found before them in any record or proceſſe. or the return of the ſame, by reaſon of writing one letter or ſyllable too much or too little except in records and proceſſes within *Wales*, and of felonies and treaſons, and the dependances of the ſame.

Stat. 27. *El.* 5 After demurrer joyned and entred, the ſame Court amended all imperfections, defects, and wants of forme, other then thoſe onely, which the party demurring ſhall particularly expreſſe in his demurrer. Howbeit, his Act ſhall not extend to the proceedings in an appeal of fellony or murder, or upon an Indictment preſentment, or penal Statute.

Rule 8. *weſtm.* 2. 39. 13. *E.* 1. Damages given againſt the Sheriff, if he return not at all, or return a *tarde*, upon writs delivered, or offered to be delivered him by bill:

bill: so upon returning a *Mandavi Baliva libertatis* falsly: Upon any resistance of any great man to execute the Kings precepts, the Sheriffe shall take the *Posse comitatus*, and see it served: *See* 2 E 3.5.

The Stat. of York 5.12, E, 2. Bailiffes of Franchises must deliver their returnes of writs to the Sheriffs by Indenture, and if he change the return, the Lord of the Liberty, and the party shall recover double damages: Sheriffs and Bailiffs shall set their proper names to all returnes.

Stat. 27. El. 12 Every Under-Sheriff, Bailiff of Franchise, Deputy, Clerk of the Sheriffe, &c. must take the oath of Supremacie, and another oath for the true speedy and indifferent returning of writs, and in panelling of Jurors, without taking above the fees allowed.

Stat. 29. El. 4. No Sheriffs, Under-Sheriffe, Baliffe of a libertie, or any of their Deputies shall either directly or indirectly take more for serving an extent or execution, then after the rate of 12*d.* for every pound under 100*l.* and 6*d.* for every pound above 100*l.* of what they shall so levie, in pain to forfeit treble damages to the party grieved, and besides 40*l.* to be divided betwixt the Queen and the prosecutor.

Rule 11. *Stat.* 1. *E* 34. *Stat.* 1. Averment given in a writ of false judgment against the record certified,

Rule 26. trinity Term shal begin the monday after Trinity Sunday for keeping of Essoines, proffers, returnes, &c. the full term shall begin the Friday after *Corpus Christi* day, and have four returnes onely, *Crastino Trin. Octabis Trin. Quindena Trin.* and *Tres Trin.* the rest are cut off: also by a late Act the two first Returnes of *Michaelmas* Term are abridged.

Rule 37. 18 *H.* 6. 1. The Kings Letters Patents must bear date the day of the delivery of the warrant to the Chancellor, and not before, otherwise they are void.

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Stat. 3. 4. E. 6. 4 Every one that hath any Intreſt in any land or office by or under authority of the Kings Letters Patents (made after the fourth of *February* 27. H. 8.) may make his title, plea, avowrie, &c. as well againſt the King as any other by an exemplification (or *Conſtat*) under the great Seal.

Stat 13. El. 6. So likewiſe of the Patentees of *H.* 2. *E.* 6 *Qu M. P. & M.* and *Qu. Eliz.* and all claiming under them.

Rule 49. *Stat.* 14. *E.* 3. 8. Eſcheators ſhall not continue in their office above a year.

Rule 51. *Mag. Cart.* 35. The Sheriffe ſhall make his turn throughout the Hundred but twice a year *viz.* once after *Eaſter*, and once after *Michaelmas*: And the view of Frank pledge ſhall alſo be made at the turn of *Michaelmas*.

Stat. 31. *E.* 3. *Stat.* 1. 15. Every Sheriffe ſhall hold his turn yearly, one time within the month after *Eaſter*, and another time within the month after *Michaelmas*, in pain to loſe his turn for the time.

Stat. 1. *E.* 3. 5 *Stat.* 1. 17. Indictments in Sheriffs turns muſt be by rolls indented, one part thereof to remain, with the Endictors, the other with the Sheriff.

Stat. 1. *E.* 4. 2 upon Indictments and preſentments taken before Sheriffs, or their Miniſters at their turns or Law-dayes, they ſhall not attach, arreſt, or impriſon, nor levie any fine or amerciament of any perſon ſo indicted (or preſented) but deliver the ſame Indictments or preſentments to the Juſtice of peace of the ſame County, at their next Seſſions who ſhall proceed hereupon, as if they were taken before them.

Stat. 1. *R* 3. 4. None ſhall be returned upon a pannel of inquirie for the Sheriffs Turn, but men of good name and fame, having within the ſame County Freehold land to the yearly value of 10 s. or Copihold land

to

to the yearly value of 26*s*.8 *d*. and every Indictment otherwise taken shall be void.

Rule 55 *Westm*.1.10.3.*E*.1. Coroners shall be chosen in all counties of the most wise & discreet Knights: Sheriffes shal have Counterparts with the Coroners of all things, which concern their office: they shall take nothing of any man to do their office, in pain of great forfeiture to the King.

Stat.14.E.3.*Stat*.1.8 A coroner shal have sufficient in the County, whereof to answer all people.

Stat.28.E.3.6. Coroners shall be chosen in the full Counties of the most convenient and lawfull men, saving unto the King and other Lords (that may make Coroners) their Franchises.

Stat.1.*H*.8.7. where one is slain by misadventure, the Coroner shall execute his office without fee, in pain of 40 *s*. Justices of *Assize* and Peace have power to enquire of and punish the defaults and extortions of Coroners.

Rule 57.*Artic. super Cart*. 3.28.E.1. They shall not hold plea of any contracts or covenants, but such as one of the Kings house maketh with another of the same house: Nor of any trespasse, unlesse the party were attached, and the plea determined before the Kings departure from the place, where the trespasse was committed, Any thing attempted here against is void: Pleas of felonie (that cannot be determined before the Steward, because the felons cannot be attached, or for other like cause) shall be referred to the Common Law.

Stat.5 *E*.3.2.*&* 10 E.3.*Stat* 2.2. Inquests shal be taken by the men of the country about, & by none of the Kings house, except it be in Covenants, contracts, & trespasses, when either party is of the Kings house. *Stat*.13.*R*.2. *Stat*.1.3. the jurisdiction of the Steward

ard and Marſhall of the Kings houſe ſhall extend no further then twelve miles from the Kings Lodging.

Stat 15.*H*.6.1. The defendants may averre, that themſelves and the *P*laintiffe (at the time of the Suit commenced) were not of the Kings houſe againſt the Record.

Stat. 33.*H*.8.12. The Lord Steward of the Kings houſe alone, or (in his abſence) the Treaſurer and controller of the kings houſe with the Steward of the marſhalſie or two of them (whereof the Steward of the Marſhallſie to be one) may without Commiſſion hear and determine all Treaſons, Murders, Manſlaughters and blood-ſhed, within the kings houſe, although the king be removed before: their inquiring and verdict muſt be by the Kings houſhold ſervants in the Check-roll: No Clergie or Sanctuary is given to any, found guilty before them.

Rule 60.17.*E*.4.2. *made perpetuall* 1*R*. 2.6. No Plea ſhall be holden in Court of Pipowders, unleſſe the Plaintiffe or his Attorney ſwear, that the matter of the declaration was done in the time of the ſame fair, and within the Juriſdiction thereof, but that oath ſhall be no concluſion to the defendant, but that he may plead as he might before: Every Steward holding plea otherwiſe, forfiteth 5*l*.

CHAP. 23.

Rule 2. *Glocester* 8.6.*E*.1. Attorneys may be made in all pleas, where appeales lie not.

Merton 10. 20. *H*. 3. In ſuits at the County Court, Hundred, Weapontake, or Lords court.

Weſtm. 2, 10.13.*E*.1. An Attorney may be made in all Counties, where juſtices do journey. and *Stat*. 3.*Id*. 7.1. An appeal of death may be purſued by Attorney.

Weſtm.

*weſtm.*1.25.3. E.1 *Weſtm.*2.49.13.E.1.and *Artic. ſuper-Cart* 11.28.E.1.there ſhall be no maintenance in ſuits.

*Stat.*32.A.8.9. None ſhall buy, ſell, or get or take promiſe, or grant to have any pretenced rights or titles to lands, except the ſeller, or thoſe, by whom he claimeth were in poſſeſſion, or tooke the profits, by the ſpace of a year next before upon pain that the ſeller, &c. ſhall forfeit the value of the land, and likewiſe the buyer, knowing the ſame, provided, he that is in lawfull poſſeſſion by taking the yearly profits, may buy, &c. anothers pretenced right, &c.

Rule.7. *Stat.6.R.2.2.* Debt, accompt, and all ſuch actions ſhall be brought in the County where the contract, &c. was made.

Rule 16. *Stat.*1.E.6.7. The Acceprance of a new name of dignity ſhall not abate the writ.

CHAP. 24.

Rule 6. *Merton* 8. 20.H.3. Seiſin of ones Anceſtor in a writ of right ſhall be from the time of H 2.

In a Mortdanceſter, writ of Nief, and of entry, from the laſt return of King *John* out of *Ireland.*

In an Aſſize of *novel diſſeiſin*, from *Henry* 3. his firſt paſſage into *Gaſcogne.*

*weſt.*1.38.3.E 1. Seiſin of ones anceſtor in a writ of right ſhall be from the time of *Richard* the firſt.

In an Aſſize of *novel diſſeiſin*, and *Nuper obiit*, from H 3. his firſt paſſage into *Gaſcoigne.*

In a Mortdanceſter, Coſinage, Aywel, entry and writ of Nieſe, from H 3. his Coronation.

*Stat.*32.H.8.2. Seiſin in a writ of right, ſhall be within 60 yeares.

In a Mortdanceſter, or any other poſſeſſory action (upon the poſſeſſion of his anceſtor or predeceſſor) ſhall be within 50 yeares.

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A writ of the poſſeſſion of the Plaintiff himſelfe ſhall be within 30 years.

An avowry or cognizance, for rent, ſuit, or ſervices of the ſeiſin of his Anceſtor, or of his own, ſhall be within 40 years.

Formedons in reverter or remainder, and *Scire facias* upon fines ſhall be ſued within 50 years, after the title or cauſe of action accrued

Stat. 1 *M.* 1 *Parl.* 2 *ſeſſ* 5. The ſtatute of 32 *H.* 8. 2. ſhall not extend to a writ of right of advowſon, *Quare impedit*, Aſſize of *Darrein* preſentment, *Jure patronatus*, writ of right of ward, writ of raviſhment of ward nor to the leiſer of the wards body or Eſtate: but the time of the ſeiſin to be alleadged in ſuch caſes ſhall be as it was in the Common Law, before the making of the ſayd ſtatute.

Stat 21. *Jac.* 2. The time of preſcription for lands concealed from the King is ſixty years before the making of that ſtatute

Stat. 1. *Jac*, 16. In writs of Formedon in deſcender, remainder and reverter, and right of entry, the time is 20 years after accruer, and imperfections removed.

Rule 6. *Stat.* 25 *E.* 3 *ſtat* 5. 16. Non-tenure ſhall not abate the writ, but only for the quantity.

Stat. 37 *E.* 3. 17. No writ ſhall be abated by acknowledgment of villeinage, if the demandant or Plaintiffe will averr, that he that alleadgeth the exception was freed the day of the Writ purchaſed.

CHAP. 26.

Rule 4. *Weſtm.* 2. 2 13 E. 1. A *Cui in vita* given to the wife after her husbands death, upon his looſing of the land by default, and the Tenant that recovered againſt the husband muſt maintain his own right.

CHAP. 27.

Rule 4. *Weſtm.* 2 20. In a Writ of Coſinage Ayel, and Beſayel, the point ſhall be inquired, whether the demandant be next heir, as well as in a Mortdanceſtor.

Rule 10. *Weſtm.* 2. 1, 13. E. 1. A formedon in *Deſcender* is alſo given by this Statute to the heir in tail upon a deſcent from his Anceſtor dying ſeiſed of the eſtate tail.

Rule 12. *Merton* 1 20 *H.* 3. A woman deforced of her dower or *Quarentine*, ſhall (in a writ of Dower) recover damages, *viz.* the value of her Dower from her husbands death to the day of the recovery of her Dower, and the deforceor ſhall be amerced.

Weſtm. 1. 48. 3. E. 1. A writ of Dower *unde nihil habet* ſhal not abate, though ſhe have received part of her Dower before the writ purchaſed, unleſſe it were of the ſame party, againſt whom the writ was brought, and in the ſame Town.

Weſtm 2. 4. 13 E. 1. In place of a writ of right a *Quod ei deforceat* is given to tenant in Dower for life, by the courteſie, in Frank-marriage, and in tail, upon loſing by default.

CHAP. 28.

Rule 2. *Marlebr.* 7 52. *H.* 3. In a writ *de communi Cuſtodia*, if the deforceor come not at the grand diſtreſſe, the writ ſhall be renewed as often as may be within half a year, and every time read and claimed in the county-court; and if he come not in to anſwer, nor the Sheriffe finde him within that halfe yeare, he ſhall loſe the Ward ſaving his

his action another time, if he have right.

Weſtm. 2. 35. 13. E. 1. In a writ of ward of land or heir, or both, either of the parties dying before the plea determined, a re-ſummons ſhall be; And in the grand diſtreſſe day muſt be given, that three County dayes may be held before the returne, in every of which Proclamation ſhall be made, whereupon if the defendant appear not, judgement ſhall be given for the plaintiff: ſaving the right of the defendant, if afterwards he will claim it: So ſhall it be done alſo in a writ of ejectment of ward.

Rule 6. *Weſtm.* 2. 2. 13. E. 1. If the tenant diſclaim in the County-Court, or other Court not of Record the Lord may remove the plea before the Juſtices to cauſe it to be of Record; ſo as he may have a writ of right *ſur diſclaimer.*

Gloceſter 4. 6. E. 1. & *Explanat.* 4 When land is given in Fee-farme, rendering or doing ſo much as amounteth to the fourth part of the value of the land, if he (whoſe land is charged) let it lye freſh by two years, ſo as no diſtreſſe can be found in it, nor render or do that which is contained in the writing, the other ſhall recover the land by a *Ceſſavit*; but the tenant coming before, judgment if he render the arrerages and damages and finde ſufficient to do from thenceforth that which is contained in the writing, ſhal retain his land. *weſtm.* 2. 21. 13. E. 1. If a man detain from his Lord his ſervice due, by two years, the Lord ſhall recover the land by a *Ceſſavit*: This lyeth alſo for the Lords heir, againſt the tenant, his heirs and Alienee.

Weſtm. 2 41. If religious houſes, that have land given; &c. withdraw the Almes, &c. by two years, the donor ſhall have the like action.

CHAP. 29.

Rule 7. *Marlbr.* 9. 52. H. 3 The proceſſe in a *Scita ad molendinum* is attachment, *venire facias*, and the grand diſtreſſe: *ſee alſo there the order of proceeding in that action.*

Rule 9. *Stat.* 25 E. 3 *Stat.* 3. 3 tht Kings Collation to a benefice (being found betore Judgment to be untrue) ſhall be repealed.

Marlbr. 12. 52. H. the proceſſe in a *Quare impedit* ſhall be Summons, Attachment, and Grand diſtreſſe.

Weſtm. 5. 13. E. 1. A Coparcener being diſturbed (after Partition) ſhall have a *Scire facias*, and ſhall not be put to a *Quare impedit.*

If tenant in Dower, or by the courteſie have preſented, the reverſioner being diſturbed ſhall have a *Quare impedit*, or *Darrein* preſentment at his pleaſure.

Rule 15. *Weſtm.* 2. 9. The *Meſne* not coming in to acquit the tenant loſeth the ſervice, and the tenant ſhal have like remedy againſt the lord for exaction, as the *Meſne* might have had: And there ſee the proceſſe and proceeding to be uſed againſt the *Meſne.*

Rule 21. *Stat. de finibus.* 18. E. 1 *Stat.* 4. After the writ original is delivered in the preſence of the parties before the Juſtices, the Pleader ſhall ſay, Sir Juſtice *Conge d' accorder*, then the Juſtice ſhall ſay what ſaith Sir *R*; And when the Kings fine is agreed for; and the peace cried, the Pleader ſhall declare the ſubſtance of the fine: the parties ought to be of full age, of *ſane memorie*, and out of priſon: A *feme covert* muſt be examined before four Juſtices, and without her conſent the fine cannot be leived.

Stat. de finibus levatis, It ſhall be no good exception, that before and at the time of the fine leived the demandant

mandant or his anceſtors were ſeiſed of the land contained in the fine, or of ſome part thereof: Fines ſhall be openly read at two certain dayes in the week by the diſcretion of the Juſtices, and in the meane time all pleas ſhall ceaſe.

Sta. 5.H.4.13: Every writ of Covenant, All other whereupon Fines are levyed, the *dedimus poteſtatem*, and all knowledges of the ſame, before they be drawn out of the Common Bench by the *Chirographer*, ſhall be inrolled in a Roll to be of Record for ever, out of which execution ſhall be had, if the Notes and Fines be imbeziled.

Stat. 23 *El.*3. Every writ of Covenant, or other writ, whereupon any fine is levyed, the Return thereof, the Concord, Note, and Foot of the Fine, the Proclamations, and the Queens ſilver, alſo every writ of Entry in the *poſt*, and other writ, whereupon any common recovery is ſuffered, writs of Summons *ad Warrantizandum*, and the returne of all theſe writs, and every warrant of Attorney, may at any mans requeſt be inrolled, which Inrollment ſhall be of as great force to all purpoſes in law, as the things themſelves, if they were extant: No Fine, Proclamation, or common Recovery ſhall be reverſed by writ of Errour, by reaſon of falſe Latine, Razure; Interlining, miſ-entring of the warrant of Attorney, or of any Proclamation, or by reaſon of any other defect of form in words, and not in matter of ſubſtance.

Rule 22. *Stat.* 34.*E.*3.16. The plea of non claim of Fines ſhall be no barr hereafter.

Stat 4.*H.*7.24. Every fine after the ingroſſing ſhall be proclaimed in the Court the ſame Term, and the three next, four ſeverall dayes in every Term, all pleas ceaſing the whileſt: The Proclamations being ſo made, The fine ſhall conclude all privies & ſtrangers, except

women *Covert*, persons within 21 years of age, in prison, out of the Realm, or of *non-sane* memory (being no parties to the Fine) so as they or their heirs take their action or lawfull entry within five yeares after those imperfections removed: saving to all persons and their heirs (other then parties) the right, claim, and interest, which they have at the time of the fine so as they pursue it by action or lawfull entry within five years next after the Proclamations; And saving to all other persons such right, title, claim and interest, as first shall grow, remain, or come to them after the Proclamations by force of any matter before the fine, so as they take their right according to the Law within five years, next after it so growes, &c. And those, that be *Covert-baron*, &c. at the time when it groweth, that they or their heirs take their action or lawfull entry within five years after those imperfections removed: saving also to all (not parties or privies) the exception, that none of the parties, or any to their use, had any thing in the lands at the time of the fine.

Stat. 1. *M. Parl.* 1.7. All Fines whereupon Proclamations be not or shall not be duly made (by reason of the adjournment of any term by writ) shall be as good as if any term had been holden from the beginning to the end, and proclamations therein made according to the Statute.

Stat. 32. El. 2. Proclamations of Fines shall be only four times, *viz.* once in the term, wherein the Fine is ingrosed, and once in every of the three termes next after.

CAAP. 30.

Rule 2. MAg. Cart. 12. 9. H. 3. Assises of Mortdancester and *novel-disseisin* shall not be taken but in their proper County, by the

the Juſtices of Aſſize, and if they cannot be determined there, they ſhall be determined by the ſame Juſtice in their Journy: Alſo difficult matters ſhall be referred to the Juſtices of the bench to be there determined.

weſtm. 1. 24 3. E. 1. An Aſſize given againſt an Eſcheator, Sherif, or other Bailiffe of the King, that ſeiſeth any lands by colour of his office, without ſpecial warrant; and double damages to be recovered by the eſtte partie greieved.

Weſtm. 2. 25. 13. E. 1. An Aſſize of *novel diſſeiſin* ſhall lie for eſtovers of wood, profit to be taken in woods, a Corody, delivery of Corn, and other victuals and neceſſaries to be received yearly in a certain place, toll tronage, paſſage, Pontage, Pawnage, and the like to be taken in places certain, the keeping of Parks, Woods, Foreſts, Chaſes, Warrens, Gates, and other Bayliwicks, and Offices in fee; And in all theſe caſes the writ ſhall be, *de libero tenemento*: All an Aſſiſe is given for common of turbarie, fiſhing and ſuch like Commons appendant to a freehold, or without a freehold by ſpecial deed (at leaſt) for term of life.

If any holding for years or in ward alien in fee, remedie ſhall be had by an Aſſize, and both the feoffors and feoffees ſhal be had for diſſeiſors, ſo that during the life of any of them the ſaid writ ſhall hold place; but if they die the remedie ſhall be by writ of entry.

the giving of this writ in new caſes ſhal not diminiſh the force thereof in thoſe, wherein it had force before; and remedie alſo ſhall be had thereby, in caſe where on feedeth in the ſevrall of another.

In this ſuit, if the defendant fail to make good the exception, which he pleads, he ſhall be adjudged a diſſeiſor without taking the Aſſize, and ſhall give to the Plaintiffe double damages both inquired, and to be inquired; and beſides ſhall ſuffer a years Impriſonment

If such an exception shall be alledged by a Bailiffe, the taking of the Assize shall not thereby delayed, nor yet the judgement upon the restitution of the land and damages: Howbeit, if the Master of such Bailiffe afterwards offer to prove to the Court by matter of Record, that there was just exception, whereby the Plaintif might have been barred, he shall have a *venire facias*, to produce such record; And then, if the Justices see cause, the plaintif shall be warned to appeare at a certain day, and the defendant shall then have again his seisin and damages, and the plaintif shall be punished by Imprisonment at the discretion of the Iustices: In like manner also shall the Iustices: proceed, in case the defendants' proof is by deeds and releases; for if the plaintif purchased the Assize contrary to his own deed, he shall be punisht, as aforesaid.

*Stat.7.R.*1.10. An Assize of *novel disseisin* for rents issuing out of Lands in divers Counties shall be taken *in confinio comitatus*, as is used for Common of Pasture, in one County, appendant to tenements in another.

Stat. 1.*H*4.8. A speciall Asize is maintainable by the disseisee for such lands, as are granted by the Kings patent, without title first found by inquest for the King, without suit to be made to the King in that behalfe; And if the pattentee pray in *Aide* of the King, a *procedendo* shall also be granted without suit. Here if the Asize passe for the disseisee, he shall recover treble damages against the patentee.

Stat.H.4.8. If any make forcible entry into lands by way of maintenance, the Chancellor of *England* shall grant a special Asize without suing to the King. and if the disseisor shall be attainted thereof, he shall suffer one whole yeares imprisonment, and restore double damages to the party grieved.

*Stat.*21.*H.*8.3. The plaintif in Asize may abridge his

his plaint of any part, whereunto a bar is pleaded without prejudice to the residue.

Merton 3.20. *H.*3. A man disseised recovering his seisin by Assize of *novel disseisin*, or confession of the party, and having the same delivered him by the Sherif, if he be again disseised of the same tenements by the same disseisor, he shall have a writ of redisseisin to command the Sherif (taking with him the Keeper of the pleas of the Crown, and other Knights) in proper person to go to the land, &c. and by the first Iurors or other lawfull men to make inquiry: Howbeit, this must not be without speciall commandment of the King: The *redisseisor* shall be imprisoned.

Marlbr. 8 52. *H.*3 And not delivered without special command of the King, and payment of a Fine.

Westm. 2. 8. 13. *E.* 1. Writs of *redisseisin* must be inrolled in the Chancery, and transcripts thereof shall be sent into the *Exchequer*.

Westm. 2. 26. A writ of *Redisseisin* shall lie for them that have recovered by default, reddition, or otherwise, without recognition of assizes or Iuries: The *redisseisor* shall answer double damages, and not be repleviable by common writ.

Rule 8. *Westm.* 2. 24. 13. *E.* 1. Giveth an assize of nusance against him, to whom the tenement is alienated after the nusance is made.

Stat. 6. *R.* 2. 3. The Plaintif, if he will, may have a writ of nusance in the nature of an Assise, determinable before the Iustices, or before the Iustices of Assize.

Rule 9 *Magn. Cart.* 12. *Vide supra*, *Rule* 2.

Marlb. 16. 52. *H.*3. If the Lord will not render unto the heir the land (when he comes to age) without plea, the heir shall recover his land by an Assize of Mortdancestor, together with all his damages.

West. 2. 4. 13. *E.* 1. If a woman having no right, recover

ver Dower againſt a Guardian, the heir at full age ſhall have a Mortdanceſter againſt her.

Gloceſter 3. The heir ſhall have an Aſſize of Mortdanceſter, if the tenant by courteſie alien, and leave no Aſſets.

Gloceſter 6. All the heirs, whereof one is Son or Daughter, Brother, or Siſter, Nephew or Niece, and the other in a further degree, ſhall joyne in a Mortdanceſter.

Rule 10. *Mag. Cart.* 13. An Aſsize of *Darrein* preſentment ſhall be alwayes taken before the Iuſtices of the Common place.

Rule 11. *Weſtm.* 2. 24 13. E. 1. A writ of *Juris utrum* ſhall be granted, to try whether free almes belong to one Church or another, in caſe where they are tranſferred from one Church to another.

Rule 13. *Stat.* 31. *H.* 8 1. *Io*intenants and tenants in Common of an eſtate of Inheritance in their owne right or in the right of their wives in any Mannors, Land, &c. may be compelled to make partition by writ *de partitione faciendâ*, as Coparceners are compellable to do, and afterwards ſhall have aid to deraigne the Warranty paramount, and to recover *pro rata*, as Coparceners (after partition) ſhould.

Stat 32. *H* 8. 32. *Io*intenants and tenants in common, that hold for life or years amongſt themſelves, or with others, that have Inheritance or freehold in any Mannors, lands, &c. ſhall alſo be compelled to make partition by the ſaid writ to be purſued upon their caſe Howbeit, ſuch partition ſhall not be prejudicial to any but the parties, to ſuch partition their executors and aſſignes.

CHAP.

CHAP. 31.

Rule 3. *Stat. 9. E. 3. Stat. 1. 3.* In a writ of debt brought against divers executors, they shall have but one Essoine before appearance, and another after appearance, he or they that do first appeare in the Court at the grand distresse, shall answer to the Plaintiffe, and the plaintif (if it passe for him) shall have judgment and execution of the goods of the Testator against all named in the writ, as well as if they had all pleaded.

Rule 7. *Mag. Cart. 8. 9. H. 3.* The pledges shall be free so long as the principal debtor is sufficient; And they answering the debt, shall have the lands and rents of the principall, untill they be satisfied: but *note, that this is meant of the Kings debtor.*

Stat. 1 R. 2. 12. No Warden of the Fleet shall suffer any prisoner in execution to go out of prison by Mainprize, Bail, or *Baston*, without making gree with the party, unlesse by writ, or other commandement of the King, upon pain to lose his Office, and the Creditor to have a writ of debt against him.

Stat. 23 H. 6. 10. Every Obligation taken by a Sheriff or his Ministers by colour of their office of any person in their Ward by course of Law, shall be by the name of their office, and upon condition, that the prisoner appeared at the day and place mentioned in his Writ, Bill, or Warrant, an Obligation in any other forme taken is void.

Stat. 32. H. 8 37. The Executors and Administrators of him, that hath any rent or fee-farm in fee-simple, fee-tail, or for life, shall have an Action of debt for the arrerages in the Testators life time, against the tenants, that should then have paid it, or may distreine (and

and make avowrie upon their matter) in the lands, so long as they remaine in the possession of the said tenant,, or of any claiming onely from him.

A husband seised of any such estate in any rent or fee-farm in his wives right, shall (after her death) himself (& also his executors, or administrators) have the same remedy for arrerages due in her life: So likewise of him, (his executors, or administrators) that hath a rent or fee-farme during anothers life, and *Cesty qui vie* dye, the same being unpaid.

Rule 9 *Stat.* 13. *El.* 4. The lands, profits, and hereditaments of every Accomptant, or him that receiveth money for the Queen, or her successors to be imployed to the use of the Queen, &c. shall be extended (in the nature of a Statute staple) for the payment of the arrerages: Or the Queen, &c. if he do not satisfy within six moneths after the arrerages found, may sell his land, and the party may have the surplussage to be delivered to him by him that received the money upon the sale, without further warrant: This sale to be of any land, whereof it is found by Inquisition, that the Accomptant taketh the profits; with Inquisition, if it be not true, after traverse of the office, and that found for him, he shall have his land againe without any petition, livery, or *Ouster le main*: Here, if any such buy land with the Queens treasure, and pay not the arrerages, as before; the Queen shall seize and retain the land, according to the rate that the party had it.

This Act extendeth not to such officers as have used to disburse money immediatly after their accounts past, as the treasurers of War, Garisons, Navies, &c. unlesse the Queen, &c. command present pay: Neither doth it extend to Accomptants, whose whole Receit exceedeth not 300 *l.* not to Sheriffes, Escheators, or Bailiffes of Liberties.

The

The Queen, &c, being ſatisfied by ſale of land, the ſureties ſhall be diſcharged for ſo much, and if any remain yet unpaid, the ſureties ſhall pay the reſidue ratably according to their abilites.

Stat. 27. El. 3. the Queen &c. may make ſale of the accomptants lands, &c. as wel after his death as in his life time, and as wellwhere the accompt was made, and the debt known within eight years after his death, as in his life time. Provided, that after the Accomptants death and before the lands be ſold; a *ſcire facias* ſhall be awarded to garniſh the heir, to ſhew cauſe why the lands &c. ſhould not be ſold, &c. whereupon, if the heir upon ſuch Garniſhment or two *nihils* returned do not prove unto the Court, that the executors or adminiſtrators of the accomptant have ſufficient, then ten moneths after ſuch two *nihils* or garniſhment returned, the lands &c. ſhall be ſold, and diſpoſed according to the *Stat.* of 13. *El.* 4 Nevertheleſs, the heirs ſale *bona fide* and upon good conſideration before the *ſcire facias* awarded, ſhall be good to him, that is not conſenting to defraud the Queen, &c.

This Act ſhall extend to all Officers of Receipts and Accomp s to the Queen, and to none other? The heirs lands, *&c.* ſhall not be ſold during his minority but at any time within eight years after his ful age they ſhall be liable as aforeſaid: If the Accomptant or debtor had a *Quie us eſt* in his life time, that ſhall diſcharge the heir of debt.

Stat. 7. Ja. 15 No debt ſhall be aſſigned to the King, *&c.* by any debtor or accomptant, other then ſuch debts as did before grow due originally to the Kings debtor or Accomptant *bona fide*: All Grants and Aſſignments of debts to the King, *&c.* contrary to the true intent of this Act ſhall be void.

Rule 15. *Marlbr.* 23. 52. H. 3 Attachment given in an

an Action of Accompt againſt Bayliffs, that withdraw themſelves, and have no lands or tenements to be diſtrained by.

Weſtm. 2. 11. 13. E. 1. He to whom the accompt is to be made, may aſsign Auditors to take it, who may immediately commit to the next Gaole the Accomptant (being found in arrerages) till he fully ſatisfie: whereupon the Accomptant finding himſelf grieved, may bring the matter by a *ſcire facias* before the Barons of the Exchequer.

CHAP. 32.

Rule 22. *Weſtm.* 1. 20 3 E. 1. Treſpaſſers in parks and Ponds attainted at the ſuit of the party (beſides making large amends according to the treſpaſs and fine at the Kings pleaſure) ſhall have three years impriſonment, and finde good ſurety not to commit the like treſpaſſe; And if he cannot finde ſurety, he ſhall abjure the Realm. Being a fugitive and having no lands or tenements, whereby to be juſtified, he ſhall be proclaimed from county to county; and (if he appear not) outlawed.

Stat. 5. *R.* 2. 7. None ſhall enter into lands or tenements by force, in pain of Impriſonment and ranſome at the the Kings pleaſure.

Stat. 15. *R.* 2. 2. When forcible entry is made into lands or Church-livings, one or more Juſtices of peace, taking ſufficient power and going to the place ſo kept by force may commit the offender to the next Gaole, there to remain convict by the Juſtices record, till he hath made fine and ranſome to the King; and herein the Sheriff and all others ſhall be aſſiſtant, in paine of Impriſonment and great fines making.

Stat. 8. *H.* 6. 9. The Statute of 15 R. 2. 2. ſhall be duely put

put in execution both againſt forcible entry and forcible detainer, though the entry was peaceable.

When complaint of any ſuch entry or detainer ſhall be made to any ſuch Juſtice or Juſtices of peace, he or they by precept ſhall command the Sheriffe to ſumm on a ſufficient Jury, and having by them made inquiry of the force committed, ſhall cauſe the tenements to be reſeiſed, and that as well in the abſence as preſence of the party offending. And here, the alienation of tenements (ſo entred into or detained by force) for maintenance, ſhall be adjudged void: Howbeit, this Act ſhall endamage none, where peaceable poſſeſſion hath been enjoyed three years.

Stat. 31. *El.* 11. There ſhall be no reſtitution upon an Indictment of forcible entry or detainer, where the defendant hath been three years next before in quiet poſſeſſion, and his eſtate therein ended.

Stat. 21. *Ja.* 15. Vpon force or detainer, as aforeſaid, a Juſtice or Juſtices of peace have power to give reſtitution of poſſeſſion, as well unto tenants for years, by *Elegit*, Statute-Merchant, or ſtaple, copiholders, or Guardians by Knight ſervice, as unto ſuch as claim freehold or Inheritance.

Merton. 6. 20. *H.* 3. A Lay-man raviſhing or marrying a Ward within 14 years of age, ſhall be impriſoned, beſides loſſe of the value of the marriage.

Weſtm 2. 35. 13. *E.* 1. A ſtrict Law againſt one that taketh away a Ward.

CHAP. 33.

Rule 2. *Magna Cart.* 34. 9. *H.* 3. A woman ſhall have no appeal, but only of the death of her husband.

Glocester 9. 6. *E.* 1. An appeal of the death of a man muſt

must be brought within the year.

*Stat.*3.*H.*7.1. One acquitted upon an indictment of Murder or man-slaughter, or as accessory, shall not go at large without good bayl, untill the year and day be past, within which time an appeall may be brought (if no Clergy be had before) and all advantages therein saved, as if the acquittall had not been.

CHAP. 34.

Rule 17. & 18. *West.*2.7. A guardian may have writ of admeasurement of dower, howbeit the heir (at full age) shal not be barred by that suit, if the guardian did follow it faintly.

In Writs of admeasurement both of Dower and Pasture after the great distresse, proclamation shall be made two County dayes, whereupon if the party come the plea shall proceed, if not, admeasurement shall be made in his default.

*Westm.*2.8.13.*E.*1. when the same party (after admeasurement, another time surchargeth the Common, a writ to enquire of that second surcharge shall go out either *judiciall*, if the former admeasurement were before the Justices, or otherwise, *Originall*, out of the Chancery, and the beasts surcharging the Common, (or their value) shall be answered to the King.

Rule 24 &c. *Marlbr.*21.52.*H.*3. The Sheriff may *replevin* beasts not only without but within a liberty also if the bayliff of the liberty will not do it.

*Westm.*2.2.13. *E.*1. The sheriff or bayliff shall take pledges of the plaintiff before they make deliverance of the beasts, not only *de prosequendo*, but for return in them, if a return be adjudged, he that taketh pledge, otherwise shall answer the price of the beasts.

Upon

Upon a return awarded to the defendant, the writ *de returno habendo* shall have this clause (that the Sheriffe shall not deliver them without writ, wherein mention shall be made of the Jndgment.) and thereupon he may (if he will) have a judicial writ to the Sheriffe to deliver him the beasts: but if afterwards the Plaintiffe desire to replevie his Beasts again, he shall have a *Judicialt* writ (*viz* a writ of *second deliverance*) that the Sheriffe taking surety for the suit, & also for the beasts to be returned or their price (if return be awarded) shall deliver the beasts before returned, and the distrainor shall be attached to come before the justices at a certain day, and if he that replevied make default, or for some other cause, return of the distresse is awarded) being now twice replevied (the distresse shal afterwards remain irrepleviable.

Stat. 12. P. *M.* 12. Every Sheriffe of a Shire (being no City) shall at his first County-day, or within two moneths after receit of his patent procalim in the shirtown four deputies (at least) dwelling not past 12 miles one from another, which in his name shall make *Replevins*, as the Sheriffe might do himselfe.

Rule 30 *Stat.* 2. E. 3. 3. Commissions of *Oyer* and *Terminer* shall be only granted to the Justices of the one Bench or other, or to Justices *errants*.

CHAP. 36.

Rule 1. *Stat de quo warranto* 18 E. 1. Pleas of *quo warranto* shall from henceforth be pleaded and determined in the Circuits of the Justices. See also *Stat de quo warranto novum*.

Rule 3, &c. *Stat.* 36 E. *Stat.* 1. 13. No Escheator shall take enquests of office but indented between the Jurours and him, otherwise they are void.

Stat. 33. *H.* 8. 22. No Escheator shall sit *virtute officii* (only) to find an office of lands holden of the King, of 5*l.* value or above, in pain of five pounds.

Stat. 8. *H.* 6. 16. No escheator shall take inquests but of people impannelled by the Sheriff, and those enquests must be returned within a month after the taking, in pain of 20*l.* so also of Commissioners.

Stat. 23. *H.* 6. 17. An Escheator shall take an inquest, *virtute brevis*, within a moneh after the delivery of the writ unto him his fees are there also, set down.

Stat. 1. *H.* 8 8. He shall not sit, unlesse he have lands &c. to the clear yearly value of 40 marks, in pain of 20*l.* He shall not delay to take the Verdict, when the Jury offers it, in pain of 100*l.* so also of Commissioners: He shall not be Escheator again within three years after that year ended.

Stat. 36. *E.* 3. *Stat.* 1. 13. A traverse is given to the party, whose lands are seized by office of alienation without licence, or the nonage of the heir in Ward, It shall be sent to the Kings Bench to be tryed.

Stat. 69. *E.* 3. *Stat.* 1. 13. Upon a traverse of *mouſtrans de droit* the Chancellor may let him (that tenders it) the lands holden to farm, finding surety to do no waste.

Stat. 8. *H.* 6. 19. They shall not be let to farm till the inquests returned, nor within a month after, within which time the party grieved may have the benefit of the former statute: All Letters Patents within the moneth shall be void.

Stat. 18. *H.* 6. 6. All Letters patents made of lands or tenements before office found and returned, shall be void.

Stat 1. *H.* 8. 8. Divers good provisions concerning escheators Commissioners, Jurors, and Offices, and the manner of returning offices into the *petty bagg*.

Stat.

Stat. 1. H. 8. 10. Lands ſeiſed into the Kings hand by office, ſhall be let to farm to him, that tendred to traverſe the ſame within three moneths after ſuch office found, notwithſtanding the Statute of 8 H. 6. 16.

Stat. 3 E. The eſtates and intereſts of others ſhall be ſaved, though they be not found in the office where an heir of full age is found within age, he ſhall have a writ *de ætate probanda*, and may proceed to ſue out his livery or *ouſter le main*, (as his caſe is) and receives the profits of his lands, notwithſtanding ſuch office found.

Where after the Kings tenants death more hiers then one are found, or if one be untruly found a *Lunatick Idiot*, or dead, the party grieved may have his traverſe, as in other caſes of untrue Inquiſitions: A Traverſe of *Monſtrans de droit* is given without petition, though the King be titled by double matter of Record.

When the Jury finds *de quo vel de quibus Ignorant*, or *per quæ ſervitia ignorant*, the firſt ſhall not make a tenure of the King, nor the laſt tenure in *Capite*; but in ſuch caſes a *Melius inquirendum* ſhall iſſue forth traverſe given to an office where a wrong tenure is found: the rents of mean Lords ſhall be paid (during the nonage of the Ward) by the officer, that receives the revenue of the Wards lands.

Artic de ſuper cart. 1968 E. 1. When the Sheriffe or Eſcheator ſeize land into the Kings hand without cauſe, upon ouſting of the Kings hands, the party ſhall have the meſne iſſues.

Stat de Eſcheatoribus. 29 E. 4. 3. If the Eſcheator by writ out of the chancery ſeize land into the kings hand, and after upon Inquiſition no title is found for the king to have the Cuſtodie, an *ouſter le main* ſhall be awarded for the party out of the Chancery: Provided, that if any thing afterwards may be found in the Chancery,

Exchequer, or K. Bench for the King, a *ſcire facias* ſhall go out againſt the party, and if the King have right, he ſhall be anſwered of all the iſſues from the time of the Eſcheators firſt ſeiſing of the land.

Stat. 23. *H.* 6. 17. In a *ſcire facias* upon a traverſe againſt any Patentee, no protection ſhall be allowed.

Rule 11. *Stat.* 28. *E.* 3 4 The rents given to them, that ſue livery, when the rent day commeth, how ſoon ſoever it cometh after the livery.

Stat. 32. *H.* 8. 46. The erection of the Court of Wards And *Stat.* 33 *H.* 8. 22. the annexing thereunto the Liveries: *See the Statutes at large.*

Rule 31. Alſo for the better preſervation of the peace divers wholeſome Lawes began to be framed from the begining of the Reigne of *E.* 3. for the eſtabliſhing of juſtice of Peace in every County, untill at laſt about the 12. year of *R.* 2. they were fully ſetled, and had power to keep their Quarter-Seſſions; which Government Sir *Edward Cook* hath obſerved to be the beſt in the Chriſtian world for the preſervation of the Peace: And therefore ſee thoſe Statutes, as you ſhal find them ranked together in divers Books now extant.

Rule 33. Concerning Informations there are divers good Lawes made, which are now ſorted together (under the titles of *actions popular* or *Informations*) in divers Treatiſes, which treat of the office of a juſtice of Peace; and therefore it is conceived needleſſe here to inſert them.

Rule 34 *See Officium Coronatoris*, 4. *E.* 1. Which ſetteth down the whole orde how he is to proceed upon tir quiries: See alſo *Stat de Exonia* 14. *E.* 1. and the articles thereunto annexed.

Artic ſuper Cart. 3. 28. *E* 1. The Coroner of the countie ſhal joyn with the Kings Coroner in inquring of the death of a man in a Kings houſe.

Stat.

*Stat.*33.*H.*8.12. The Coroner of the Kings house shall inquire alone without the Coroner of the County, by a jury of the Yeoman officers of the Court.

CHAP.37.

Rule 10 *Stat.*31.*El.*3. Upon a summons in a reall action (fourteen dayes before the return) a Proclamation of the Summons shal be made) upon a Sunday after divine Service) at the doore of the parish Church where the Land lieth, and shall also be returned with the names of the Summoners: And till that done, no *Grand Cape* shall go out, but a *Alias* and *Pluries*, as the case requireth

Rule 15. *Stat.*1.*H.*5. In every original writ of actions personal, appeals, & indictments, in which the *Exigent* shall be awarded, to the names of the defendants additions shall be made of their estate and degree or misterie, and the Towns, Hamlets, Place, and Counties, in which they were or be conversant, otherwise all Outlawries thereupon pronounced shall be *nul.* And before these Outlawries be pronounced the said writ, and indictments shal be abated by the exceeption of omitting the said additions.

*Stat.*6.*H.*6.1. All *Exigents* and Outlawries upon indictments in the Kings Bench of Felony and Treason, shall be void, if before the *Exigent* awarded a *Capias* be not directed to the Sheriff of the County, whereof they be named in the Indictment, having six weeks space (or larger, at the discretion of the justices) before the return.

*Stat.*8.*H.*6.10. In every indictment, or appeal of Treason, Felonie, or Trespasse, after the first *Capias* returned forthwith (before the *Exigent*) another *Capias* shall be awarded to the shheriffe of the County, where

by the indictment the party is supposed to abide returnable before the same Justices, &c. containing the space of three moneths (where the Counties be holden from moneth to moneth) and of four moneths (where they be holden from six weeks to six weeks) by which *Capias* the Sheriffe shall be commanded to take his body, if he be found in his Baliwick: If he be not found, then to make proclamation (for his appearance) in two Counties before the return of the writ. Any *Exigent* or Outlawrie otherwise pronounced shal be holden for none.

Stat. 10. *H.* 6. 6 The like is to be observed, when any indictment or appeal (taken before Justice of Peace, or other having power) shall be removed before the King in his Bench, or elswhere by *Certiorari*, or other wise.

Stat. 6 *H.* 8. 4 Upon every *Exigent*, a writ to make three Proclamations (returnable the day of the return of the *Exigent*, and the Proclamations to be made, *viz.* two in the full County Court, & the third at the general Sessions) shall goe out to the Sheriffe of every other County (*viz.* then that, where the action is brought) where the defendant is said to be, or lately to have been if the Kings writ run there; otherwise to the County next adjoyning to that, where he is said to be: Every outlawry to the contrary shall be avoided by plea.

Stat. 37. E 3. 2. A writ *Identitate nominis*, given to those, whose lands, goods or chattels be seized by any officer surmising them to be outlawed (where they be not) because they bear such names as they who be outlawed for want of good declaration of the Sirname.

Stat. 9. *H.* 6. 4. A writ of *Identitate nominis* shall be (in this case) maintainable by executors, as well as by the testator himself, if he were living.

Rule 18. *Stat.* 5. E. 3. 12. where the Plaintiffe hath recovered

recovered damages, and he against whom damages are recovered is outlawed at the Kings suit, no Charter of pardon shall be granted, except the plaintiffe be satisfied for his damages. When one is outlawed by proceſſe before his appearance, no ſuch Charter ſhall be granted, except he yield himſelfe before the juſtices, from whom the *Exigent* iſſued, who ſhall cauſe the party to be warned to appear before them at a day: whereupon if the plaintiffe appear, they ſhall plead upon the firſt originall, as if no Outlawry had been. If the plaintiffe appear not, and the warning be duely witneſſed he that is outlawed ſhall be delivered by vertue of his Charter.

Stat. 31 *El.* 3. Upon every *Exigent* in a perſonal action, a writ of proclamation ſhall go out of the ſame Court to the Sheriffe of the County, where the defendant at the time of the *Exigent* ſhall be dwelling, whereupon three Proclamations ſhall be made, one in open County-Court, another at the Quarter-Seſſions, and the third one month (at leaſt) before the *Quinto exact* at the door of the pariſh Church where the defendant ſhall be dwelling at the time of the *Exigent*, upon a Sunday, immediately after Divine Service. All Outlawries otherwiſe executed ſhall be void.

But before reverſing of any ſuch outlawrie in this reſpect, the defendant ſhall put in bail, not onely to anſwer the Plaintiffe in a new action, but to ſatisfie the condemnation, if the Plaintiffe begin his ſuit within two Termes.

Rule 20 *Stat.* 25 *Ed.* 3. *Stat.* 5. 14. The ſecond *Capias* in caſe of Felony muſt be returned three weeks after.

Rule 24 *Weſtm.* 2. 39 13 *El.* 1. The Plaintife may averre that the Sheriffe might have returned greater iſſues, and thereupon ſhall have a Judicial writ to the Juſtice of Aſſize to inquire of what and how great iſſue

he might have answered from the day of the purchase of the writ to the day of the return, and the Sheriffe shall be charged with the surplussage not returned.

Stat. 1. E. 3. *Stat.* 1. 5. The like averment of too small issues returned, given against Bailiffes of Franchises, as well as against the Sheriffe.

Rule 30. *Westm.* 1. 17. 13 E. 1. the Sheriffe or Bailiffe may take the power of the County or Baliwick, and beat down a Castel or Fortresse, where such beasts are inclosed, if he that took them will not make deliverance.

Rule 33. *Westm.* 2. 11. 13. E. 1. Processe of Outlawrie given in an action of accompt.

Stat. 25. E. 3. *Stat.* 5. 17. Such processe shall be made in a writ of debt and detinue of Chattells, and taking of beasts by *Capias & Exigent*, as is now used in a writ of accompt.

Stat. 7. *H.* 5. 1. In writ. against forgers of false charters and muniments like processe shall be made by *Capias & Exigent*, as in writs of trespasse.

Stat. 19. *H.* 7. 9. Like processe given in actions upon the case sued in the King's Bench and Common place as in actions of trespasse and debt.

Stat. 23. *H.* 8. 14. Like processe shall be had in every action, brought upon the statute of 5 *R.* 2. 7. (concerning forcible entry) as in trespasse, and like processe in every writ of annuity and covenant as in debt.

CHAP. 38

Rule *Stat.* 25. *H.* 8 20, for the election nomination, presentation, investing, and consecrating of Arch Bishops and Bishops.

Rule 32. *Stat.* 5. *R.* 2. 2. Prohibits going beyond sea without licence, *but it is repealed by* 4. *Ja.* 1.

Rule

Rule 35. *Stat. Carlile* 15.E.2. The *Dedimus potestatem* shall be directed to two of the Justices, or to one Justice and a Knight.

CHAP. 39.

Rule 5. *Gloucester* 5.6.E.1. An Action of waste is maintainable against tenant by the courtesie, in dower, for life or years; and the party attainted thereof shall lose the thing wasted, and recompence the party grieved thrice so much as such waste shall be taxed at.

*Westm.*2.14.13.E.1. the processes in a writ of waste shall be summons, attachment, and distresse; and if he come not, then a writ unto the sheriffe (taking with him 12 men) to go to the place wasted, and there enquire of the waste, and upon that waste returned judgement shall be.

*Stat.*11.H 6.5. Where the tenants grant over his estate, but notwithstanding takes the profits, and commits waste, an action lies against him.

*Magn Cart.*4.9.H.3. The Guardian may not commit waste, in pain to lose the Wardship: And (*Cap.* 5.) must repaire and sustain the houses of the prosit of the land.

*Gloucester*5 6.E.1. If the Guardian commit waste, and the Wardship lost answers not the damages before the heires age, he shall render damages to the heir otherwise.

Artic super Cart 18.28.E.1. An Escheator committing Waste upon Wards lands, shall answer damages.

Stat 36.E.1.*Stat.*1.13. The heir shall have an action of waste against the Escheator committing waste, as well within age, as when he is at full age: *See also* 14.E.3.13.

*Westm.*2.22.13.E.1. A writ of waste is given for one Jointenant

Jointenant or tenant in common againſt another, wherein the defendant is to be at his choiſe, to take his part in certain (and then to have for his part the place waſted) or to agree from thenceforth to take nothing more, then his Companions do.

Gloceſter 13 6 E. 1. Hanging a plea by writ, the tenant may not commit waſte, nor eſtrepment of the land in demand, and if he do, the demandant may have a writ to cauſe the land to be kept, that no waſt nor eſtrepment be done.

CHAP. 40

Rule 2. 36, & 3. 15. Declarations ſhall be good enough, if they have matter of ſubſtance, though the termes be not apt.

Rule 10 *Weſtm.* 1. 46. If a writ of *novel diſſeiſin* be purchaſed, and the diſſeiſor die before the Aſſize be paſſed, the plaintiffe ſhall have a writ of entry *ſur diſſeiſin* againſt his heir: The like ſhall the heir of the diſſeiſin have, in caſe he die, &c. The nonage of the heir of the diſſeiſor or diſſeiſee ſhall not prejudice in an Aſſize; If the Inqueſt paſs againſt the heir of the diſſeiſee, he ſhall have an Attaint *gratis*.

Gloceſter 2. 6 E. 1. Where an Infant is held from his Inheritance, whereby he is driven to his writ, the Inqueſt ſhall paſſe, notwithſtanding his non-age.

Expoſition of the Stat. of Gloceſter 2 6. E. 1. Touching an Enqueſt to be made for an Infant, that Statute ſhal run without limitation of time.

Weſtm. 2. 40 13 E. 1. The ſuit of a woman or her heir (in a *Cui in vita*, or a *ſur Cui in vita*) after the death of her husband ſhall not be delayed by minority of the heir, who ought to warrant the land.

Rule 31. *Weſtm.* 2. 42. Certain caſes, wherein view ſhall not be granted

Stat

Stat. de vſu terræ & Eſſoyne de Jervitio Domini Regis 12. E. View ſhall be granted in a writ of Ward, in a writ of Cuſtomes and ſervices, in a writ of Advowſon of a Church (where there be more Churches then one in a Town, and all of one Saint) in a writ of Dower, and in a *nuper obiit*.

Rule 32. *Weſt.* 2. 3. The reverſioner may be received in default of tenant for life, dower, curteſie, &c. If Judgment be given by reddition, or default, the reverſioner ſhall have a writ of entry after the death of the Termor; ſo ſhall the heir alſo, where the tenant was tenant in tail.

Stat de deſenſione Juris 29. E. The reverſioner deſiring to be received before judgment, ſhal finde ſurety (as the Court ſhall allow) to anſwer the value of the iſſues of the tenant from the day of the receit, till judgement, if it paſſe for the demandant.

Stat. 13. *R.* 2. 17. The like receit ſhal be for the reverſioner upon the faint pleading of ſuch a tenant, and he ſhall plead in chief without delay: and the Judges (by diſcretion) ſhall give dayes of grace between the demandant and him, that is received, without giving the Common day in plea of land, unleſſe it be by the demandants aſſent. Surety for the value ſhall be found (as before in 29. E.) as well where the receit is counter pleaded, as where it is granted.

Glocester 11. Tenant for years ſhall be received before judgment rendred, to ſay that the Action was by Covin

Weſtm 2. 4 Receipt is given to the Wife in her Husbands life time, if he loſe her land by default, and the tenant, that recovered againſt the husband, muſt maintain his own right.

Rule 33. *Weſtm.* 1. 39. What Counter pleaders are good in Mortdanceſtor, *nuper obiit*, Intruſion, and ſuch like

like actions, and also in writs of Entry in the degrees, &c. See also *Stat. de vocat. ad warrant.* 20. *E.* 1. 1. 4 *E.* 1. 13. *& Westm.* 2 6.

Rule 48. After Sanctuaries were taken away for sundry offences by divers Statutes at last by the Statute of 21 *Jac.* 28 They were totally annulled.

Rule 53. *Glocester.* 3. The heir shall not be barred of his Mothers Inheritance by the Warranty of the father, being tenant by courtesie, or alination without fine in the Mothers life time, except he leave *Assets.*

Rule 68. *Westm.* 1. 12. Notorious Felons, which will not put themselves upon an Inquest at the Kings suite against them, shal be put to a pain *fort & dure* as those, that refuse to be tried by the law of the Land.

Rule 70. The Statutes, that concern Abjuration are *Stat. de Artic. Cler.* 10. and 15. 21 H. 8 2. & 21. 2. 8 12 & 24. but Sanctuaries being taken away, that is now also out of use.

CHAP. 41.

Rule 18. *Westm.* 2. 38. In an Assize there shal be but 14 summoned: And men of the age of 70 years continually languishing, or sick at the time of the summons shall not be put upon Juries.

Artic. super Cart. 9 & 34. *E.* 3 4 Juries shall be made of the next people of the Countie.

Stat. 11. *H.* 6. 1. None dwelling in Stews shall be of a Jury.

Stat. 9. *E.* 3. 5. A Deed pleaded in a Franchise shall be tryed in the County, where the action is brought.

Stat. 2. 3 *E.* 6 24. Upon a stroke or poyson in one Countie, the party dying in another, an indictment and triall may be in the County where he dieth, and also an appeal sued there, and tryed by 12 men of the same County

County: Likewiſe the acceſſories in one County to a murder or felonie in another County, ſhal be indicted, arreigned, &c. in the County, where the offence of acceſſorie is committed.

Stat. 33. *H.* 8. 20. The indictment and triall of *Lunaticks*, confeſſing treaſon, &c.

Stat. 33 *H* 8. 23. The triall of Treaſon, &c. confeſſed before the Lords of the Counſel, ſhal be by commiſſion out of the Chancery.

Stat. 27 *H* 8. 4. and 28. *H.* 8. 13. Treaſon Felonie, &c. commited within the Admirals juriſdiction, ſhall be heard and determined by commiſſion directed to the Admirall, and three or four others, &c.

Stat. 32. *H.* 8. 4. Treaſons and miſpriſions of Treaſon in *wales*, ſhall be tried there by ſuch Commiſſioners, as the King ſhall appoint.

Stat. 35. *H.* 8. 2. Treaſon, &c. committed out of *England*, ſhall be tried in the Kings Bench, or by Commiſſioners, &c.

Stat. 1. *&* 2. *P.* & *M.* 10. Trials for Treaſon ſhall be according to the courſe of the Common Law.

Stat 23. E. 3. 3. No Indictors ſhall be put on Inqueſts upon the deliverance of Indictees of Felonies or Treſpaſs.

weſtm. 2. 38 None ſhall be put in Aſſize or juries triable in their own County, but ſuch as have 20*s. per annum* free-hold, nor in Aſſize, &c. triable out of their County, unleſs they have 40*s. per annum*, *&c.*

Stat. de ponend. in Aſſiſ. 21. E. 1. None ſhll be put in Aſſize out of their County, unleſs they have 5*l. per annum*, now within their County, unleſs they have 40*s. per annum.*

Stat. 2. *H.* 5. 3 Upon triall for the death of a man, and betwixt party and party (when the debt or damages amount to 40 Marks) he ſhall have 40*s. per annum.*

Stat.

Stat. 33. *H.* 8. 13. In Corporations 40*s.* in good ſufficeth.

Stat. 2. *E.* 6 32. The 40*s.* yearly value muſt be inſerted in the *Venire facias*.

Stat. 27. *El.* 6. Such a Jurour ſhall have 3*l.* yearly value; Howbeit theſe two loſt Statutes extend not to Corporations.

Stat. 27. *El.* 7. The Jurour ſhall be returned by ſome addition, whereby he may be known.

Stat. 8. *H* 4 3. every Jurour returned within the County of *Middleſex*, ſhall be called the fourth day of the return.

Stat. 5. *E.* 3. 10. An *Ambidexter* ſhall never be of a Jury more.

Stat. 34. *E.* 3. 8. The party or any ſtranger may ſue him for it.

Stat. 38 *E.* 3 12. And both the Jurours and the Embraceours, being thereof attaint, ſhall pay ten times ſo much, as they have taken.

weſtm. 2. 30. when and how Aſſizes &c. ſhall be taken in the Country: See alſo *Statutum de finibus levatis* 4. 21 *E.* 1. That Enqueſts thereof being taken ſhall be returned into the Bench and there judgment ſhall be given thereupon, &c.

Stat. Ebor. 3. 12. *E.* 2. Enqueſts in Pleas of Land, that require too great examination, ſhal be taken in Country before a Juſtice of the place, whe e the plea depends, and a Knight there, or other, &c.

Stat. 42. *E.* 3. 11. *Niſi prius* ſhall not be granted before the name of the Jurours returned.

Stat. 14. *E.* 3. 16. The directing of *Niſi Prius* to be tried in the Countrey.

Stat. 18 *El.* 12. Trial of *Niſi Prius* for *Middleſex*, in the term time, or 4 dayes after.

Rule 19. *Stat.* 15. *H* 8 6 Made perpetual 2 *E.* 6. 32 Six ſufficient Hundreders ſhal be returned upon every Jury.

Stat

Stat. 27. *El.* 6. If two sufficient Hundreders appear in any personal Action it sufficeth.

Rule 20. *Stat.* 7. *R.* 2. 10. An Assize of *novel disseisin* of rent issuing of tenements in divers Counties shall be in the Confines of the said Counties.

Rule 22. *Stat.* 28. *E.* 3. 3. confirmed by 8. *H.* 6. 28. In every suit between an alien and a Denizen (though the King be a party) the one halfe of a Jury shall be Aliens, if there be so many in that *Visne*? and if there be not so many, then so many as be there, not parties.

Rule 23. *Mag Cart.* 29 A Peer of the Realm upon an Indictment of Felony or Treason shall be tried by his Peers.

Stat. 20. *H.* 6 9. Dutchesses, Baronesses, Countesses, &c. sole or married, shall be tried (in such cases) as Peers of the Realm.

Rule 37. *Stat.* 22 *H.* 8. 14. No person arraigned for petty Treason, Murder, or Felony, shall be admitted to any peremptory Challenge above the number of twenty.

Rule 38 *Stat.* 35. *H.* 8. 6 made perpetual 2. *E.* 6. 32, A *Tales* may be made up before the Justices of Assize, or *Nisi prius*, of able persons of the same County then present, at the prayer of the plaintiffe or demandant.

Stat. 4. 5. *P. M.* 7. So likewise for the King upon request by any authorized thereunto, or assigned by the Court, or by the Informer, that followes as well for the King as for himselfe.

Stat. 14. *El.* 9. Such a *Tales de circumstantibus* shall be also granted at the prayer of the defendant or Advowant

Rule 53. *Stat.* 21. *H.* 8. 3. The demand of a thing intire may be abridged before Verdict, though thereby the writ become false.

Rule

Rule 60. *Magn. Cart.* 28. Wager of Law shall not be admitted without credible witnesses.

Stat 5. H. 4 8. In actions of debt upon arrerages of accompt saining (to the intent to put the defendants from their law) that the same was found before their Apprentices or Servants, Auditors assigned therein; it shall be in the Judges discretion upon examination of the Attorneis (or whom else they please) to receive the defendants to their law, or else to try the same by Enquest.

CHAP. 42.

Rule 10, &c. *Westm.* 2. 12. In an appeal of the death of a man no Essoin shall lie for the Appellor.

Westm. 1. 41. In Assize and *Juries utrum*, after the tenant hath appeared, he shall be no more essoyned so it is also for demandants in an Assize, by *Westm.* 2. 28.

Westm. 1. 42. Perceners or Jointenants in a *Præcipe* against them shall have but one Essoin: so likewise for a man and his wife by the *Stat. of Glocester*, 10.

Stat. 9. E. 3. *Stat.* 1. 3. In a writ of debt against executors, they shall have but one Essoin before, and another after appearance.

Westm. 2. 27. No Essoin is allowed after day given by *prece partium.*

Marlbr. 13. After a man hath put himselfe upon an Inquest, he shall have but one Essoin.

Westm. 2. 17. After one hath put himselfe upon an Inquest, an Essoin shall be allowed him at the next day, but never after.

Marlbr. 19. None shall need to swear to warrant his Essoin.

Westm

Weſtm. 1. 43. The Demandant may aver againſt an Eſſoin of being beyond Sea.

Weſtm. 2. 17. He may aver that the tenant is not ſick, nor in ſuch plight, but that he come before the Juſtices, &c.

Stat. 5 *E.* 3. 7. Eſſoin of the Kings ſervice or protection ſhall not be allowed in writs of Attaint.

Stat. of Eſſoyns, 12 *E.* 3. 2. See many particular Caſes where Eſſoins lie not.

Rule 16. *Stat. de anno Biſſextili*, 21 *H.* 3. The day increaſing in the leap-year, and that going before, ſhall be accounted for one day.

Dies communes in Banco, 51 *H.* 3. Dayes given in Writs ſhall have 9 returns.

Dies communes in Banco, and 32 *H.* 8. 21. Common dayes ſhall be given, in real actions 9 returns; In Writs of Dower 5 returns.

Marlbr. 21. In Dower, *unde nihil habet*, 4 or 6 dayes ſhall be given in the year: in Aſſizes of *Darrein preſentment* or *Quare impedit*, from 15 dayes to 15 dayes, or from 3 weeks to 3 weeks, as the place ſhall be near or far.

Stat. 5 *E.* 3. 6. & 7. In an attaint 5 dayes at leaſt.

Rule 17. 1 *E.* 6. 7. By death of the King, no Action, Suit, Bill, or Plaint, ſhall be diſcontinued, or put without day, but ſhall proceed as if the King had lived.

Rule 39. *Stat.* 14 *E.* 3. 14. The manner of ſearch in ſuit by petition.

Rule 43. 27 *El.* 7. A Juror ſhall not be returned without a true addition of the place where he dwels, and ſome other addition, whereby he may be known.

Stat. 35 *H.* 8. 6. What iſſues ſhall be returned upon Jurors.

Stat. 2. 3 *E.* 6. 32. If the principal Jury appear not

fully at the *nisi prius*, those that make default, shall forfeit their issue, though the Jury be made up *de Circumstantibus*.

CHAP. XLIII.

Rule 20 *Stat. de consultationi*, 24 *E.* 1. A Consultation shall be awarded by the Chancellor or chief Iustice, upon sight of the Libel, at the Instance of the Plaintiff.

Stat. 50 *E.* 3. 4. Upon a consultation the Ecclesiastical Iudg may proceed, notwithstanding any other prohibition, so the matter of the Libel be not enlarged or changed.

Rule 23. *Westm.* 1. 15. Persons outlawed, and such as have abjured the Realm, Provers, and such as be taken with the manner, Prison breakers, Thieves, openly defamed and known, Appellees by provers (during the life of such provers) house burners, counterfeiters of the Kings Seal and Coin, Excommunicate persons, manifest offenders and Traitors are not bailable &c. Other Statutes that concern Bail are, 3 *H.* 7. 3. 4 2 *P. M.* 13. and 3 P. *M.* 10.

CHAP. XLIV.

Rule 3. *Westm.* 2. 5. When the Parson of any Church is disturbed to demand his Tithes in the next Parish by an *Indicavit*, the Patron shall have a writ to demand the Advowson, See *Stat. pro Clero*, 18 *E.* 3. 7, & 47.

Rule 6. *Stat.* 25 *E.* 3. 18. The Lord may seise the body of a Villain, notwithstanding that a writ *de libertate probanda*, be hanging.

Rule 10. *Stat.* 5 *E.* 3. 7. No protection shall be allowed in writ of Attaint;

Rule

Rule 12. See *Stat.* 13. *R.* 26. The Statute of Protection, *&* 1 *R.* 2. 8.

Rule 14. A Creditor shall have an action and Judgment against the Kings *Debtor*, notwithstanding such a Protection, but not execution, unless he take upon him to pay the King, and then he shall have judgment and execution of both debts, as well of that due to the King, as to himself.

Rule 16. *West.* 2. 17. He may aver that he is not sick *&c. vide supra, Cap.* 42. *Ru.* 10.

CHAP. XLV.

Rule 7. *Stat.* 14 *El.* 8. Every fraudulent recovery against Tenant for life, whereupon the Tenant for life is vouched, shall be void against the Reversioner, or him in Remainder, unless it be by his own consent appearing of Record.

Stat. 21 *H.* 8. 15. Termers for years, or such as are in by Execution of Statute Staple, Statute Merchant, or *Elegit*, may falsifie recoveries for their own term only as Tenants of the Free-hold might have done at the Common Law.

Rule 13. 25 *H.* 8. 3. revived by 5, 6 *E.* 16. 10. One arraigned upon an indictment of petty Treason, wilfull burning of houses, murther, robbery or other felony, according to the meaning of the same Statute, if he stand mute of malice or froward mind, or challenge peremptorily above 20. or will not directly answer, shall lose his Clergy, in such manner as he should, if upon the arraignment he had been found guilty.

Stat. pro Clero, 25 *E.* 3. 4. None convict of petty Treason shall have it.

Stat 1 *El.* 6. Not in Rape, Ravishment, or Burglary, nor in the carnal abusing of a woman within ten years of age.

Stat. 25 *H.* 8. 6. & 5 *El.* 17. Not in buggery.

Stat. 5 *E.* 6. 9. Not for robing a dwelling house, booth, or tent, &c.

Stat. 4, 5 *P. M.* 4. Not for accessories before the fact in petty treason, murther or robbery in an house, or in or near the high way; or for the wilfull burning of a dwelling house, or a barn with Grain.

Stat. 25 *H.* 8. 3. & 5 *E.* 6. 10. He that doth a Robbery or Burglary in one County, and is taken with the goods so robbed or stoln in another County, shall lose his Clergy there, as he should do where the Robbery or Burglary was committed

Stat. 4 *H.* 6. 13. & 1 *E.* 6. 11. It is grantable but once to one person, unless he be within orders.

Stat. 4 *H.* 7. 13. He that asketh his Clergy the second time, shall at a certain day bring his Letters of order or a Certificate.

Stat. 4 *H.* 7. 18. He that hath his Clergy shall be marked in the hand, *viz.* with an *M* if he were convict of Murder, with a *T* if he were convict of other felony.

Stat. 1 *E.* 6. 12. A Lord of the Parliament in all cases, where Clergy lieth at the Common Law, or is restrained by Statute, shall upon his prayer be adjudged as a Clerk convict, though he cannot read.

Stat. 1 *El.* 4. & 18 *El.* 7. After purgation he shall be put to answer to any offence (committed before his admission to the Clergy) whereupon Clergy is not allowable, and whereof before he was not indicted and acquitted, convicted or attainted, and pardoned, and shall be demeaned in all things, as if he had never been admitted to his Clergy.

Stat. 18 *E* 7. He that is allowed Clergy, shall not be delivered to the Ordinary, but after burning in the hand, shall be forthwith delivered by the Justice out of prison; yet for further correction they may detain him

him in prison, so as it be not above a year.

Rule 24. *Westm.* 2. 12. One being acquitted upon an Appeal or Indictment of felony, may have the abettors inquired, and have a judicial writ for damages against them, if the appellant be not sufficient.

Stat. 8 *H.* 6. 10. An action upon the case given for him that is duely acquit by Verdict against every procurer of any judgment, or appeal of treason, felony, or trespass: and like process shall be therein, as in a writ of trespass, *vi & armis*.

Rule 37. *Westm.* 2. 18. 13 *E.* 1. Where debt is recovered or knowledged in the Kings Court, or damages awarded, it shall be from henceforth in the election of the Plaintiff to have a writ of *Fieri facias* unto the Sheriff, to levy the debt upon the lands and chattels of the debtor, or that the Sheriff shall deliver to him all the chattels of the debtor, (except oxen and beasts of his Plough) and the one half of his land untill the debt be levied upon a reasonable prize or extent. And if he be put out of the land, he shall recover it again by a writ of *Novel disseisin*, and after that by a writ of *redisseisin*, if need be.

Action Burnel. 11 *E.* 1. A debt acknowledged to a Merchant before the Mayor of *London*, *York*, or *Bristol*, or before a Mayor or Clerk, (appointed thereunto by the King,) shall be entrolled: and if it be not paid at the day, the debtors moveables shall be prized and sold in satisfaction by the Mayor if he have any within his jurisdiction, else by writ out of the Chancery upon a Certificate of the Recognizance thither. The Apprisors are to take them at the price, if they apprize them too high; if the debtor have not moveables sufficient, he shall be imprisoned, until, *&c.* the like processes against pledges in default of sufficient moveables of the principal.

Stat. de Mercatoribus, 13 E. 1. A debt acknowledged to a Merchant before the Mayor of *London*, or chief Warden of the Town, which the King shall appoint, or other sufficient men (when they cannot attend) and before a Clerk, which the King shall assign, shall be enrolled; and if it be not paid at the day, the debtor if he be a Lay-man, shall be imprisoned by the Mayor, untill, &c. if he be within their power, else by writ out of the Chancery, upon Certificate of the Recognisance thither: And if he agree not with the Creditor within a quarter of a year after, then all the lands which were the debtors (the day of the Recognisance made) and also his goods shall be delivered to the Creditor upon a reasonable extent. And of these lands so delivered, the Conisee being ousted, shall have an Assize or *redisseisin*.

The Writ out of Chancery shall be returnable before the Iustices of either Bench, and upon a *non est inventus* returned, or that he is a Clerk, writs to all the Sheriffs, where he hath lands or goods, shall go forth to deliver the same upon reasonable extent, and to what Sheriff he will to take his body. The like Process shall be against the pledges, if the money be not paid at the day: if the debtor or pledges die, the Creditor shall have execution upon the lands of the heir as at his full age. *The Stat. of the Staple*, 27 E. 3. *Stat.* 2 8. The Mayor of the *Staple* shall take recognisance of debt before himself, and the Constables of the Staple, whereupon (default of payment being made) the debtors body shall be imprisoned, and his goods sold in satisfaction of the debt (if they be within the Staple) otherwise upon a Certificate in the Chancery, a writ shall go out from thence to imprison his body, & seize upon his lands and goods, which shall be returned into the Chancery, and execution thereupon in all respects as in the Statute Merchant, save that the debtor shall have no advantage of the quarter of a year.

Stat.

Stat. 5 *H.* 4. 12. A Statute being once shewed in the Common Place, and the process afterwards discontinued, yet execution may afterwards be awarded without shewing it again.

Stat. 11 *H.* 6. 10. He that is in prison upon a Recognizance, shall not be delivered out of prison upon a *scire facias* against the party, and surety found to the King alone, but shall find sureties severally, as well to the King, as to the other Party.

Stat. 23 *H.* 8. 6. Either of the chief Justices, (or in their absence out of the term) the Mayor of the Staple of *Westminster* with the Recorder of *London* may take Recognisances, and they shall be executed in all respects as a Statute Staple.

Stat. 27 *El.* 4. Every Statute Staple or Merchant, not brought to the Clerk of Recognisances within 4 months next after the acknowledgment thereof, shall be void against all persons, their heirs, successors, executors, administrators, and assigns only, which for good consideration, shall after the acknowledging thereof, purchase the land, or any part thereof liable thereunto, or any rent, lease or profit out of the same.

Stat. 32 *H.* 8. 5. Lands lawfully delivered in execution upon a judgment, Statute Merchant, Staple, or Recognisance, being evicted without any fraud or default in the tenant before he have levied the whole debt, and damages, and Recoverer and Recognisee shall have a *scire facias* out of the same Court, where execution was awarded, returnable there full forty dayes after the date: and thereupon a new writ of execution (of the nature of the former) shall issue forth to levy the rest of the debt and damages, if the defendant make default, or shew no good matter in barr.

Mag. Chart. 8, 9 *H.* 3. The King shall not take the land

lands or rents of the debtor, if he have sufficient thereof.

Mag. Chart. 18. The goods of the debtor may be attached after his death by the view of lawful men, that nothing be medled with till the Kings debt be paid.

Stat. 13 *H.* 8. 39. All obligations to the King shall be of the force of a Statute staple.

Rule 48. *Westm.* 2. 45. 13 *E.* 1. For all things recorded before the Kings justices, or contained in fines (as Contracts, Covenants, Obligations, Services or Customs, acknowledged, or any other things entrolled) a writ of execution shall be within the year; But after the year a *Scire facias*: The like also of a Mesne, who by judgment or recognisance is bound to acquit.

CHAP. XLVII.

Rule 9. *Stat.* 9 *R.* 2. 3. If tenant for life, or in tail after possibility of issue extinct be impleaded, and judgment pass against him, the reversioner or remainder man at the time of the judgment, shall have writ of error upon an error in the record of the same judgment, as well in the life of such a tenant, as after his death: and if at the time of reversing the judgment, the tenant for life, *&c.* be alive, he shall be restored, *&c.* his possession with the mean profits, and the reversioner, *&c.* to the arrerages of the rent, if any be due: But if the tenant for life, *&c.* be dead at the time of reversing the judgment, then the reversioner, *&c.* shall be restored to the possession with the issues after the death of the tenant for life, *&c.* and also to the arrerages due in his life: *See the Marqu. of Winch. case, Co.* 3. 4.

Stat. 31 *E.* 3. 12. Error in the exchequer shall be reversed before the Chancellor and Treasurer, taking to them such Justices, and other sage persons as they shall think

think fit, and afterwards the roll shall be sent back into the Exchequer to make execution.

Stat. 31 *El.* 2. If either the Lord Chancellour or Lord Treasurer, or both the Chief Justices come at the day of adjournment, in the Writ of Error in the Exchequer, it shall be no discontinuance.

Stat. 32 *H.* 8. 30. *Made perpetual*, 2 *E.* 6. 32. After a Verdict tried by 12 men or more in any suit in a Court of Record, no Judgment shall be stayed or reversed for any mispleading, lack of colour, insufficient pleading, miscontinuance, discontinuance, misconveying of Process, misjoining of issue, lack of Warrant of Attorney for the party against whom the issue is tried, or any other default or negligence of the parties, their Councellors, or Attorneys.

Stat. 18 *El.* 4. 14. After a Verdict of 12 men or more in any suit in Court of Record, Judgment shall not be stayed or reversed for default of form, or lack of form, false Latine, variance for the register, *&c.* in any writ, original or judicial; Declaration, Bill, or Plaint, or for want of any writ original or judicial, or by reason of any imperfect or insufficient return, or for want of any warrant of Attorney, or by reason of any manner of default in process, upon or after *Aid*, *prayer* or Voucher.

Stat. 27 *El.* 5. After Demurrer joyned or entred in any suit in Court of Record, the Judges shall proceed and give Judgment according to right, and the matter in law appearing to them, without regarding any imperfection, defect, or want of form in any Writ, Return, Plaint, Declaration, or other pleading whatsoever, except those only, which the party specially and particularly shall set down and express together with his Demurrer: And no Judgment to be given shall be reversed by writ of error, or by any such imperfection, defect or want of form, as aforesaid, except as is before excepted.

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The two last Statutes extend not to suits of Felony or Murder, nor to the indictment or preferment of them; or of treason, nor to the Process of any of them, nor to any suit upon any popular or penal Statute.

Rule 16. *Stat.* 27 *E.* 3. An error in the Kings Bench in an action of debt, detinue, covenant, account, action upon the Case, *Ejectione firmæ*, or trespass first commenced there (where the King is no party) may at the parties choise be reversed in the Exchequer Chamber before the Justices of the Common place, and such Barons of the Exchequer as are of the *Coife*, or six of them at the least, other than for error concerning the jurisdiction of the Kings Bench, or want of form in a Writ, Return, Plaint, Bill, Declaration, Pleading, Process, Verdict, or proceeding whatsoever: And upon the judgment affirmed or reversed, the Record shall be sent back into the Kings Bench, to proceed and award Execution thereupon, the party grieved with such reversal or affirmation, may have a writ of error in the Parliament in such sort as is now used upon erroneous judgments in the Kings Bench.

Stat. 31 *El.* 1. Any three of the Justices and Barons (if the full number come not) may receive Writs of Error, award Process, prefix dayes for the continuance of Writs of Error, *&c.*

Rule 12. *West.* 1. 37. 3 *E.* 1. An Attaint is given in pleas of Land or of Freehold, and of things that touch Freehold.

Stat. 1 *E.* 3. *Stat.* 1. 6. It is given in Writs of Trespass, as well upon the principal, as upon the damages.

Stat. 5 *E.* 3. 6. *&* 7. In attaints no Essoin or protection shall be allowed: and a *nisi prius* is given in such Writs, as well as in others.

Stat. 28 *E.* 3. 8. An Attaint is given in trespass as well upon a Bill, as upon a Writ, without having regard to the quantity of the Damages.

Stat. 34 *E.* 3. 7. An Attaint is granted in all pleas, as well real as perſonal.

Stat. 9 *R.* 2. 2. It is given to the Reverſioner during the life of his Tenant for life upon a recovery againſt him, with reſtitution to the Tenant that left his poſſeſſion, together with the mean profits, and of the arrerages to the reverſioner; but if the tenant that ſo loſt be dead, or were of covin with the recoveree; reſtitution ſhall be made to the reverſioner of the poſſeſſion it ſelf with the mean profits arrerages, after ſuch death or recovery by covin, ſaving to the tenant his action by *ſcire facias*, if he will traverſe the Covin.

Stat. de Attinctu. 13 *E.* 2. If the petty Jury appear not at the firſt diſtreſs againſt them, or a *nihil* be returned, the grand Jury ſhall be taken by their default.

Stat. 23 *H.* 8. 3. *Made perpetual by* 13 *El.* 25. In any ſuit before Juſtices of Record (not concerning life) an Attaint is given againſt the petty Jury, and every of them, and the party himſelf; the proceſs againſt the Petty Jury and Grand Jury, ſhall be ſummons and reſummons, and diſtreſs infinite.

Open Proclamation ſhall be made in the Court where the diſtreſs is awarded, more than 15. dayes before the return of the diſtreſs; and the Grand Jury ſhall be taken in default of the Defendant, or petty Jurors, or any of them.

If any of the petty Jury appear, then the Plaintiff ſhall aſſign the falſe Oath of the firſt Verdict untruly given, whereunto the petty Jury ſhall have no anſwer if they be the ſame perſons, and the Writ, Proceſs, return, and Aſſignment be good and lawfull, (except the plaintiff in the ſame attaint hath before been non-ſuit or diſcontinued his ſuit, or hath had a former judgment therein) but only that they made a true oath, which iſſue ſhall be tried by 24 of the Grand Jury; and the party

ſhall

and plead that they gave a good Verdict, or any other matter which shall be a sufficient bar of the attaint: Notwithstanding which plea, the grand Jury shall without delay enquire of the truth of the Verdict: such a day shall be given in a Process, as in a writ of Dower, and no Essoin or protection allowable.

By the death of the party, or one of the petty Jury the attaint shall not abate, nor be deferred against the rest, as long as two of the petty Jury shall live.

Every attaint shall be in the Kings Bench or Common place, and the *Nisi prius* granted upon the distress by the discretion of the Justices. Every of the petty Jury may appear and answer by Attorney. The *Non-suit* or release of one, when there be diverse plaintiffs or defendants in an Attaint shall not prejudice.

Every one of the grand Jury must have 20 Marks apiece Land of freehold out of ancient *demesne*, but if the value of the thing in suit be under the value of 40 *l.* then 5 Marks a year, or 100 Marks worth of goods sufficeth: For default of such sufficient Jurors within the same County, a *Tales* shall be awarded unto the next.

Stat. 11 *E.* 6. 4. The Plaintiff shall recover Costs and Damages against the Juror, or defendant, that pleads a feigned plea in delay.

FINIS.